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### ELECTION COMMISSION, INDIA

#### NOTIFICATION

*New Delhi, the 25th September 1958*

S.O. 2038.—Whereas the election of Shri M. R. Masani as a member of the House of the People from the Ranchi East constituency of that House has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Md. Ibrahim Ansari, Prass Toli, P.O. Hinoo, Ranchi (Bihar);

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby published the said order of the Tribunal.

IN THE COURT OF THE MEMBER, ELECTION TRIBUNAL, RANCHI

*The 25th day of August, 1958*

ELECTION PETITION No. 311 of 1957

Md. Ibrahim Ansari—*Petitioner*.

*Versus*

M. R. Masani and five others—*Respondents*.

*For the Petitioner*.—Shri R. K. Sahay, Advocate, Shri R. K. Tewary, Advocate and Shri C. N. Sinha, Pleader.

*For Respondent No. 1*.—Shri A. N. Sahay, Advocate and Shri N. N. Sen Gupta, Pleader.

1. This is a petition presented on 27th April, 1957 under Section 81 of the Representation of the People Act to set aside the election of respondent No. 1 on various grounds and declare the petitioner elected.

2. The petitioner and respondents 1 to 6 were the contesting candidates for election to the House of People of India from the Ranchi East Un-reserved Constituency. The polling took place between 25th February, 1957 and 12th March, 1957 and on 15th March, 1957 respondent No. 1 was declared elected securing 39025 votes; the next highest number 36785 having been polled in favour of the petitioner. The material allegations of the petitioner are as follows:—

(a) That respondent No. 1 was disqualified to contest the election as he was an employee of the Tata Iron and Steel Company in which the Government of India had shares and other financial interest.

(b) That respondent No. 1 had committed the following corrupt practices:—

- (i) On 26th February, 1957 respondent No. 1 procured jeep BML 8112 for conveyance of electors to the polling booths for casting their votes and actually carried Mulraj Purohit, Manilal Bhagal and Shrimati Dayawanti Purohit (wife of Mulraj Purohit) to booth No. 38 located in the Ranchi Municipal office building at about 8-15 A.M. where the aforesaid voters cast their votes and which fact had been admitted by respondent No. 1 before the Presiding Officer as also the Returning Officer.
- (ii) Respondent No. 1 paid Rs. 300/- as reward to Subodh Mishra the editor of a Hindi weekly "The Swarnrekha" for indulging in all sorts of nefarious and false propaganda against the Congress candidates including the petitioner and in pursuance of the said conspiracy Subodh Mishra issued a questionnaire (annexure X of the petition) against Ram Ratan Ram a Congress candidate for election to the Bihar Legislative Assembly from the Ranchi Constituency, which formed part of the Constituency concerned and which questionnaire were false and calculated to impair and injure the reputation with respect to the personal character and conduct of the Congress candidates and which materially affected the result of the election of the petitioner.
- (iii) That respondent No. 1 procured for his election campaign the services of the Welfare Officer of the Associated Cement Corporation of Khelari who was a Government servant.
- (iv) That respondent No. 1 paid Rs. 200/- to Alimuddin in presence of Abdul Rab Sardar, Akbar Ali, Amanatulla and Habib Khan for meeting his marriage expenses after getting an assurance that Alimuddin and his family members would vote for him and on 24th February, 1957 and 25th February, 1957 Alimuddin was seen canvassing for respondent No. 1 offering Rs. 5/- per vote to the voters at Ranchi particularly to Amanatulla, Akbar Ali and Md. Reaz of Hindpuri and Sk. Nizam, Sk. Zafir and Mukul Pahan of village Bargain.
- (v) That leaflets (annexure Y of the petition) purported to be under the name of Maulana Syed Shah Mohammad Usman Gani, General Secretary of the Amire Shariat of Phulwari Sharif forbidding Muslim voters to vote for Congress candidates on the ground of Islam and communalism and which was not actually issued by the Maulana, were distributed by respondent No. 1, Mohan Das, Alimuddin Ansari and other agents and supporters of respondent No. 1 on 23rd February, 1957 and 24th February, 1957 at Ranchi, on 2nd March, 1957, 4th March, 1957 and 7th March, 1957 at village Bargain and on 5th March, 1957 and 6th March, 1957 at Katankuli which amounted to systematic appeal by them to the Muslim voters not to vote for the Congress candidates including the petitioner on ground of religion and community and which distribution materially affected the result of the election of the petitioner who otherwise would have been successful.
- (vi) That respondent No. 1 incurred or authorised expenditure in contravention of Section 77 of the Representation of the People Act.

Some details challenging proper maintenance and correctness of the account of expenses submitted by respondent No. 1 as also some omissions of some expenses have also been mentioned in the petition and which I will mention when I deal with the relevant issue. Some other allegations which either suffer for want of full particulars or were not pressed at the time of framing of the issues are also mentioned and which it is not necessary to state.

5. Of the respondents only respondent No. 1 has contested the petition and I will hereafter refer him as "respondent". The main grounds of contest on behalf of the respondent are that the petition is liable to be dismissed for non-compliance of the provisions of Section 117 of the Representation of the People Act, that the respondent was not disqualified to contest as the Government of India did not have any share in the Tata Iron and Steel Company and that respondent No. 1 did not resort to any corrupt practice. It is stated that the respondent did not procure the jeep BML 8112 for conveyance of electors to the polling booths for purpose of casting votes. The act of giving lift to the three persons mentioned in the petition is admitted but the respondent denies that the said act constituted a corrupt practice within the meaning of law. It is further stated that respondent No. 1 did not pay Rs. 300/- to Subodh Mishra for issuing the questionnaire (annexure X of the petition) and the respondent was not in any manner concerned or connected with the issue of the same. Further the questionnaire does not provide for the petitioner any ground specified in Sections 100 and 101 of the Representation of the People Act. It is also denied that the Welfare Officer of the Associated Cement Factory, Khelari is a Government servant. Further the respondent denied to have paid Rs. 200/- or any other sum to Alimuddin Ansari for meeting his marriage expenses and asserted that the allegation that

Almuddin was seen offering to pay Rs 5/- per vote for the respondent is false and baseless and that Almuddin had no such instructions to do the same. Further it is stated that the respondent was in no way connected with the making or publication of the leaflet (annexure Y of the petition) and the respondent had no knowledge if it was not issued by the Maulana concerned. The respondent or any of his agents never distributed any such leaflet anywhere on any date. Further the leaflet does not contain anything not permissible under the law. The respondent also denied to have incurred or authorised expenditure in contravention of Section 77 of the Representation of the People Act nor he failed to maintain account of his election expenses properly. The details relied upon by the petitioner in respect of the account are denied and it is alleged that the accounts submitted were correct and proper and the allegations in this respect do not afford any ground for the petition under the law. The respondent also denied to have suppressed any expense and asserts that the allegations in that respect are false. Lastly it is alleged that the petition is not properly verified and that on the aforesaid grounds the petition is liable to be dismissed.

1 A recrimination petition was also filed on behalf of the respondent against the petitioner but the same was not pressed and as such it is not necessary to state the grounds stated therein. Accordingly the following issues were finally framed for determination—

#### Issues

- 1 Is the Election Petition liable to be dismissed for non compliance of the provisions of Section 117 of the Act?
- 2 Is the verification of the Election Petition defective and affects the maintainability of the petition?
- 3 Was respondent No 1 disqualified to contest the election concerned on account of his being an employee of the TISCO?
- 4 Is the election of respondent No 1 void on any of the following grounds—
  - (a) If respondent No 1 procured jeep BML 8112 to carry voters and in pursuance of the same carried three voters namely, Muihaj Purohit, Manilal Bhagat and Shrimati Dayawanti Purohit on 26th February, 1957 to booth No 38, Ranchi Municipal Office on the same?
  - (b) If respondent No 1 paid Rs 300/- as reward to Subodh Mishra, Editor of the 'Swarnrekha' for publication of the questionnaire marked "X"?
  - (c) If the Welfare Officer of Associated Cement Corporation of India at Khetlari was a Government servant and if his services were procured by respondent No 1 for his election?
  - (d) If respondent No 1 paid Rs 200/- to Almuddin Ansari of Hindpuri to meet marriage expenses on condition of his entire family voting for him and if Almuddin canvassed Amanatullah, Akbar Ali and Md Reaz of Hindpuri and Sk Nazam, Sk Zahir and Mukul Pahan of village Bargain for votes on payment of Rs 5/- to each of them at the instance of respondent No 1?
  - (e) Had respondent No 1 or his agent Mohan Das or Almuddin anything to do with the publication and distribution of the pamphlet marked "Y"?
- 5 Did respondent No 1 incur or authorise expenditure in contravention of Section 77 of the Representation of the People Act?
- 6 Is the petitioner entitled to be declared elected?

5 Before I take up the issues, I would like to mention that it is now well settled that the standard of proof required in matter of corrupt practices should be the same as in the case of a criminal nature. There are various authorities in support of this principle but since neither of the parties has referred to any, I do not think it necessary to mention them. At this place I may also mention the contesting parties in this case. The petitioner is a lawyer of the local bar for the last 16 years and belongs to the Momim community. He resides in Mahalla Doranda of this town and at the relevant period was the Secretary of the Momim Jamiat of the District of Ranchi. He has not been in practice for the last eight years, presumably because, he is more interested in politics and stood as a candidate on Congress ticket. The respondent hails from Bombay and is a management consultant. He has been in public life since 1932 and counted imprisonment in 1932, 1933 and 1943. He was a member of the Bombay Corporation for many years and the Mayor in 1912 and 1943. He was member of the Indian Legislative Assembly from 1945-47 and of the Constituent Assembly in 1947-48. He was the Ambassador of India in Brazil in 1948-49 and a member of the Provincial Parliament from 1949-51. He has recently been appointed Chairman of the Road Transport Reorganisation Committee of the Government of India. He stood as an independent candidate with the support of

the Jharkhand and Praja Socialist Parties and his election symbol was "Cock" which was the recognized election symbol of the Jharkhand Party.

#### FINDINGS

##### Issue No 1

6 Already disposed of in favour of the petitioner by my order dated 20th June 1958 which order shall form part of this judgement

##### Issue No 3

7 Not pressed and no evidence even worth the name has been adduced on behalf of the petitioner to show that the respondent was in any way disqualified to contest the election or that the Government had any share or interest in the Tata Iron and Steel Company. This issue is, therefore, answered in the negative

##### Issue No 4 (e)

8. I propose to take up this clause of the issue first as the evidence on the same is voluminous. In this respect the allegation in the petition as it originally stood was simply to the effect that pamphlets printed in Urdu purporting to be under the name of Maulana Syed Shah Mohammad Usman Gani, General Secretary of Amire Shariat of Phulwari Sharif forbidding the Muslim voters to cast their votes, on the grounds of Islam and communalism and other false allegations of commission and omission of Bihar Government, in favour of Congress candidates (annexure Y of the petition) were distributed by respondent No 1, Mohan Das his agent and his other agents and supporters. This was repeated in other places and near his election office at Budhia building Main Road, Ranchi. This pamphlet was never issued by the said Maulana and that such distribution of the pamphlet by respondent No 1, Mohan Das Ahmadullah Ansari and other agents and supporters of M. R. Masani had materially affected the result of the election of the petitioner who otherwise would have been successful. By the aforesaid allegations the petitioner attempted to make out a case of corrupt practice under Clause 4 of Section 123 of the Representation of the People Act. Realising that the aforesaid allegations suffered from want of full particulars as required by Clause (b) of Section 84 of the Act the petitioner on 16th July 1957 got the petition amended by inserting that such distributions of the leaflets by the aforesaid persons were on 23rd February 1957 and 24th February 1957 at Ranchi on 2nd March 1957 11th March 1957 and 7th March 1957 at village Bargain and on 5th March 1957 and 6th March 1957 at village Katankuli and also added that such distribution amounted to systematic appeal by them to the Muslim voters not to vote for any Congress candidate including the petitioner on ground of religion or community and thereby brought his case under Clause 3 of Section 123 of the Act as well. The grievance of the respondent in this respect is that while the Tribunal under Clause 5 of Section 90 of the Act could allow particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as in its opinion be necessary for ensuring a fair and effective trial of the petition, it could not allow any amendment of the petition which would have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. It was argued that since the petitioner made out his case of corrupt practice only under Clause 4 of Section 123 of the Act, he could not be allowed to make out a new case under Clause 3 of that Section through amendment. In my view the argument is untenable in as much as what is required of a petitioner is only to state a fact about a corrupt practice with full particulars about the names of the parties alleged to have committed such practice and the date and place of commission of each such practice. The corrupt practice alleged was the distribution of the leaflet (said to be objectionable) by certain persons on certain dates at certain places which the petitioner eventually did and it is for the Tribunal to find under which Clause of Section 123, the alleged corrupt practice comes. In my view it is not at all necessary for the petitioner to mention what an alleged corrupt practice constituted. Supposing that the petitioner had not at all mentioned that the alleged distributions of the leaflets amounted to systematic appeal to Muslim voters not to vote for any Congress candidate and the Tribunal found that such distribution amounted to such appeal, there is nothing in law to prevent the Tribunal from giving a finding to that effect. In support of my observations, I may refer to the case of Abdul Jalil Chaudhury versus Rathindia Nath Sen reported in AIR 1958 Assam page 51 at page 54 in which it was held that where the election petition alleged the corrupt practice under Section 123(4) of the Act the Tribunal could without taking fresh evidence, arrive on the evidence and materials on the record that the corrupt practice made out was under Section 123(2) and not under Section 123(4). Now let us see if the contents of the leaflet offend the provisions of either Clause 3 or Clause 4 or even Clause 2 of Section 123 of the Act. For this I first propose to give a translation of the leaflet which is as follows —

#### 10 WHOM THE MUSLIMS SHOULD GIVE THEIR VOTES

"The valuable advice of Hazrat Maulana Syed Shah Mohammad Usman Gani Sahab, Chief Secretary of Amarat Shariat, Phulwari Sharif.

Hazrat Maulana Syed Shah Mohammad Usman Gani Sahab is the Chief Secretary of Amarate Shariya, Phulwari Sharif of the State of Bihar. From 1940 to 1945 he was the President of the Jamiat Ulema of the State of Bihar. At present also he is the Vice president of the Jamiat Ulema of the State of Bihar. He has been with Hazrat Maulana Abul Mohasin Mohammad Sajad in all his political and religious works. Before independence it was Mohammad Usman Gani Sahab who had presented the necessity of taking part in elections before the Amarate Shariya and Jamiat Ulema and which had been accepted by the aforesaid bodies. In Bihar, Maulana Abul Mohasin Mohammad Sajad founded the Muslim independent party only on the advice and co-operation of Maulana Usman Gani and which party had given the worst defeat to the reactionary Muslim parties in the election of 1957. This statement of the Maulana is well considered and an invitation to everyone for thought and action. Whatever has been written therein in respect of the Congress Government is a fact.

Hazrat Maulana Syed Shah Mohammad Usman Gani Sahab is the Chief Secretary of Amarate Shariya, Phulwari Sharif of the State of Bihar. From 1940 to 1945, he was the President of the Jamiat Ulema of the State of Bihar. At present also he is the Vice president of the Jamiat Ulema of the State of Bihar. He has been with Hazrat Maulana Abul Mohasin Mohammad Sajad in all his political and religious works. Before independence it was Mohammad Usman Gani Sahab who had presented the necessity of taking part in election before the Amarate Shariya and Jamiat Ulema and which had been accepted by the aforesaid bodies. In Bihar, Maulana Abul Mohasin Mohammad Sajad founded the Muslim independent party only on the advice and co-operation of Maulana Usman Gani and which party had given the worst defeat to the reactionary Muslim parties in the election of 1957. This statement of the Maulana is well considered and an invitation to everyone for thought and action. Whatever has been written therein in respect of the Congress Government is a fact.

'After independence the Jamiat ulma has straight away kept itself aside from politics has limited its activities within the circle of religion but it has given full freedom to its officials to directly take part in politics and to help or oppose the political parties. On this ground, as many respectable officials of the Jamiat ulma are helping the Congress so also its many other respectable officials are in the parties rival to the Congress and they openly oppose the Congress. Hazrat Amie Shariyat has also given permission to his officials that they in their personal capacity may help or oppose any candidate in the election. So, I, in my personal capacity, express my opinion.

'I, before this, used to openly support and help the Congress and my support was available to the Congress in the elections of 1952 and by which the Congress candidates were benefited and their opponents had to suffer loss and for which some Congress candidates paid thanks to me and their opponents spoke ill of me. I had given support to the Congress in 1952 on the hope that this was the party which had given sacrifices on the path of independence of the mother land and it would govern the country with justice and honesty but whatever this Government has done proved against expectations. The increase in communalism, bribery, casteism, tyranny, lawlessness, theft, dacoity, the division of poverty and want, the abundance of unemployment, the scarcity of purchasing power and interference in religious matters of the Muslims are the great achievements of this Government.

"(1) In principle the Government is without any religious but through the educational syllabus the superiority of one religion is put in the minds of the children from which there is danger of infidelity among the Muslim children. (2) Through laws, inheritance of the Muslims has been given to their non-Muslim and religiously ill legitimate children. (3) The door of service in the India Government has been kept open for persons keeping numerous illegal women but the door of service has been shut for persons having more than one wife. (4) In Bihar if a young man of 23 years would marry even one wife then he will be debarred from service but there will be no hindrance in the service of one who keeps ten illegal women. (5) In educational institutions the Muslim children are made to sing song of infidelity and this song has been said to be the choicest song of the Government. On protest of the Muslims, the Director of Public Instructions, Bihar notified that though the Government likes this song but one Section does not like it so whosoever may not join in it, he should not be compelled to do so. Nevertheless this song is made to sung everywhere and the Muslim children are made to join it. The teachers of the school say that they have not received any such circular. (6) Wherever the majority want, they attack the Muslims, kill them, loot their houses and burn them but the Government does not take any suitable action and such things are happening all along since 10 years. (7) Whenever any wicked wants, he disgraces the Muslim Divines and the India Government does not take any action. (8) The Muslims are prevented from sacrifice on the plea that no sacrifice is held in their village because there is no such record in the thana. In 1955, on the occasion of sacrifice a complaint was made to the Chief Minister about a Muslim woman Mosst Latifan of village Baunsi in Raniganj thana in the Sub division of Aararia of the district of Monghyr having been killed at the hands of the police and her being buried without bath, coffin and prayer by threatening the Muslims of that village and he had promised that the Commissioner of Bhagalpur Division would enquire into this matter. Again there was question in the Assembly in respect of the same incident but the Minister replied that the Commissioner

of Bhagalpur had been directed to make enquiries and on receipt of his report it would be placed before the Assembly; but inspite of a year and a half having passed, no action has been taken against this crime because the life of a Muslim is not considered to be of any value.

"The Congress people spread communalism very much and they are responsible for communal riots. From this with such communal trend they also want to make the minorities feel their gratitude. After a riot takes place, they express their sympathy with the Muslims. By shedding crocodile's tears and by abusing communal minded people, they want to prove themselves sympathisers of the Muslims, though it is in their power to prevent such riots but they do not prevent them nor make any attempt to get the culprits punished in courts.

(9) Urdu is one of the 14 languages in the constitution of India but thinking it to be the language of the Muslims, it is ill-treated, Pandit Jawahar Lal Nehru always express his support for it but in practice he cannot even do this much as to advice the President of the democracy to accept the memorandum on behalf of lacs of citizens of U.P. and Bihar and to give the right place to Urdu in Bihar. It is apparent that the President without his advice cannot take any action. (10) An important matter concerning the Muslims of Bihar is the Madarasa Shamsulhoda of Patna against the principal of which I and the other Muslims raised opposition on educational and religious grounds and the majority of the Muslims declared the principal undesirable. The Muslim members of the Bihar Assembly and Council and other respectable gentlemen met the Chief Minister in deputation who always gave promises to them but the principal is of the type of the Government so he was made to continue though on this issue the Congress suffered defeat at the election of the Patna Corporation. I have placed only these few things about the Congress Government, otherwise for details a volume would be necessary.

"Now in these conditions it is very difficult for me to support tyranny and oppression and advice anyone to vote for the Congress candidates. I would give this advice to vote for only such candidates who are better in their personal capacity.

Lastly I would advice the Muslim voters specially that they should not entertain any feeling of inferiority on the basis of their being in minority and they should not consider their vote insignificant. Their one vote can make anyone unsuccessful and anyone successful. So you should realise the value of your vote because in constitutional and democratic countries even the majority of one vote becomes sufficient to bring in a Constitutional revolution."

I may mention here that there is no evidence to show who was responsible for the heading as also the introduction of the Maulana enclosed in black lines on the upper portion of the leaflet and only the contents purported to be the statements of the Maulana have been proved and marked Ext. 2. I have already said above about the allegations of the petitioner in the petition before as also after the amendment made on 16th July, 1957. Ordinarily the grievance of the petitioner was, apart from the distribution of the leaflet, twofold. Firstly that the allegations of the commissions and omissions of the Bihar Government mentioned in the leaflet were false and secondly that the pamphlet was never issued by the said Maulana. Though the petitioner did not specifically allege that the respondent or anyone on his behalf was responsible for printing or publishing this pamphlet, the two allegations made by the petitioner hinted towards the same and as such the respondent in his written statement made a denial of it and it also had to be stated in the issue. Both these allegations of the petitioner have been refuted by the Maulana himself (P.W. 25) and the Keeper and Partner of the label Letho Press Md. Yasin (P.W. 24) both of whom were examined on behalf of the petitioner on commission. The evidence of P.W. 25 is that he had issued the appeal and that he was the author of Ext. 2. He could not say who was the author of the top portion as also the portion enclosed in black lines above Ext. 2. He also stated that this statement of his was published in papers and many people got it printed. He further stated that in Ext. 2 he expressed his personal political view, he having been, a political worker and taking interest in politics since 1910. He also stated that he issued the statement to bring into light the defects which had cropped in the Congress party and the Congress Government and that he had not issued it with a view either to support or oppose any candidate. He also stated that it was an advice to the Muslims with a view that they should consider this matter and make decision for whom to vote. His evidence also is that he never saw nor met the respondent and that he never issued the statement to support the respondent or to oppose the petitioner. He also stated that in fact he was not even aware that the respondent and the petitioner were opposing each other. He, however, stated that many persons used this statement in the last General Elections at different parts of the State and that the same was published widely in several papers of Bihar, U.P. and Calcutta. He also asserted that the facts stated in Ext. 2 were correct. The evidence of P.W. 24 is that the leaflet concerned had been printed at his press in February, 1957, at the instance of one Shahid Ramnagri who was an employee of the paper "Sathi" (a Patna daily paper) owned by Mr. Ahad Md. Noor, Deputy Minister and edited by his son Khalid and who had placed orders, paid the bill and took delivery of 16,000 copies of the same. There is nothing in the evidence of P.W. 25 or any other witness for the petitioner to show that the respondent.

for anyone on his behalf was in any way, either directly or indirectly, responsible for either creating or publishing the leaflet. There is also nothing to show in the evidence on the side of the petitioner that the respondent had any concern whatsoever with Shahid Ramnagri. Under the circumstances it cannot be said, by any stretch of imagination, that the respondent had anything to do with the creation or publication of the leaflet. With regard to the truth or falsity of the statements contained in Ext 2, as already said above the Maulana himself has stated that they were correct. PWs 9, 10, 15, 19 and 20 also stated that the facts mentioned in the leaflet were also true to their knowledge. No evidence was led on behalf of the petitioner nor the petitioner himself stated that the allegations contained in Ext 2 were incorrect. Rather, in his argument the learned Counsel for the petitioner also stated that all the facts mentioned in Ext 2 were perfectly correct. Clause 4 of Section 123 of the Act reads as follows:—

"The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election "

I have already said above that there is nothing to show that the contents of Ext 2 were false. There is also no statement therein in relation to the personal character or conduct of the petitioner nor there is any statement which may be reasonably calculated to prejudice the prospect of the petitioner. As a matter of fact there is no reference whatsoever to the petitioner or to the election in respect of the constituency concerned. It cannot, therefore, be said that the leaflet in any way offended the provisions of Clause 4 of Section 123 of the Act. The relevant portion of Clause 3 of that Section reads as follows:—

"The systematic appeal by a candidate or his agent or by any other person to vote or refrain from voting on grounds of caste, race, community or religion for the furtherance of the prospects of that candidate's election "

In this respect also I may say that there is nothing in Ext 2 to show that this was an appeal to vote or refrain from voting on grounds stated in the Clause concerned. The Maulana mentioned in an equivocal terms that he was expressing his opinion in his personal capacity and not in his capacity as the General Secretary of the Amire Shariyat. He also stated therein that previously he used to openly support the Congress and his support was available to the Congress in the elections of 1952, by which the Congress candidates were benefited and their opponents had to suffer loss. He also stated that he had given his support to the Congress in 1952, on the hope that it would govern the country with justice and honesty but whatever the Congress Government had actually done proved against expectations. Then he enumerated some omission and commission on the part of the Congress Government in Bihar and said in the last that now in these conditions it was very difficult for him to support tyranny and oppression and give advice to anyone to vote for the Congress candidates. He also stated that he would give his advice to vote for only such candidates who are better in their personal capacity. These statements of the Maulana cannot lead to any inference that he made an appeal to vote or refrain from voting on the grounds stated in the Clause. These statements cannot also mean nor even suggest that the Maulana wanted to support any particular candidate or to oppose any particular candidate. If he did not, as usual, choose to give his advice to the Muslims to vote for the Congress on account of his own estimation about the Congress Government in Bihar, the Congress candidates or the petitioner could not take any exception to it. By giving advice to vote for only such candidates who are better in their personal capacity, the Maulana left the Muslim voters to their own choice to vote for the best candidate whosoever he might be and whichever party, even of the Congress party, he belonged. The statement undoubtedly was an expression of the personal feelings and views of the Maulana in his personal capacity which he was quite competent to do under the rights guaranteed by the Constitution of India and by no stretch of imagination it can be said that the statements were calculated to be an appeal to vote or refrain from voting for the furtherance of the prospects of the election of any candidate or that they were in support of the respondent or in opposition to the petitioner. There can, therefore, be little doubt that Ext 2 does not offend the provisions of Clause 3 of Section 123 of the Act. At this stage I would like to deal with the rulings cited on behalf of the parties. On behalf of the petitioner, reliance was placed on the case of (1) Jamuna Prasad Mukhariya *versus* Lachmi Ram and others reported in AIR 1954 Supreme Court page 686 and (2) Abdul Jahl Chaudhury *versus* Rathindra Nath Sen reported in AIR 1958, Assam page 51. In both these cases the candidates themselves had appealed to the voters of a particular community or caste to vote for them and not to vote for the other candidates as they belonged to those particular community or caste. In the present case, the facts are quite different. As I will show hereafter that there was no systematic appeal in furtherance of the prospects of the respondent's election, these two cases

have got no application. The respondent relied on the case of *Moinuddin B Harris versus B P Divgi* reported in 3 E I R page 248. In that case at page 276, the learned Tribunal observed as follows:—

"The mischief which section 124(5) was aimed at preventing was the voting for or against a candidate only because of his religion, caste race or community and if that was, as we apprehended it was, the real object of the section we must put a restrictive interpretation upon the unduly wide terms of section 124(5)."

Again at page 277 the learned Tribunal observed as follows

"The real intention of the section, in our opinion, was to prevent attacks on a particular religion or on a candidate, only on the ground that he is a follower of a particular religion. So interpreted, an attack on the petitioner on the ground that in his attitude on the question of the teaching of the Koran in municipal schools he took a view which was against the Koran, or against Islam or against religion in general, would not fall within the purview of section 124(5). It would, in our opinion, be open to a person to tell Muslim voters that in view of the attitude which the petitioner had taken or which the speaker believed he had taken on the question of the teaching of the Koran, he was not a person who could properly represent or further their interests."

Applying the principles laid down in the aforesaid authority, it is manifest that the leaflet Ext 2 does not come within the mischief of section 123(3) of the Act. I may mention here that section 124(5) of the old Act has been re-enacted as section 123(3) in the new Act. The respondent's learned advocate also placed before me the case of *Saidul Singh Caveeshar versus Hukam Singh* and others reported in 6 E L R Page 816 at page 830 where the learned Tribunal took a different view as to the interpretation of Section 124(5). The learned Tribunal observed as follows —

"We agree with the view of the Bombay Election Tribunal in *Moinuddin versus B P Divgi* (1) that in determining the scope of section 124(5) we should have regard to articles 13, 19(1)(a), 25(1) and 29(1) of the Constitution, but do not think that in consonance with those provisions of the Constitution the scope of the section is narrowed down to prohibition of attacks on a particular religion or on a candidate, only on the ground that he is a follower of a particular religion. The wider scope of the words in section 124(5) which prohibits all kinds of appeals for vote in the name of religion, whether it is the religion of the electorate or of the candidate, would be quite in keeping with the power of the State to make laws restricting the freedom of speech and expression "in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to the contempt of court, defamation or incitement to an offence", which is now conferred by the amended article 19(2) of the Constitution."

The learned advocate contended that on the facts of that case there could be no doubt that there was systematic appeal on grounds of community to vote and refrain from voting in furtherance of the prospects of the candidate's election. He also drew my attention to the following passage at page 327.—

"Criticism of the policy and doings of the Congress party (which is forming the Government at present) at the hands of a rival political organisation like Akali Party is not objectionable under the election law unless the criticism oversteps the legitimate bounds and enters upon a course which brings it within some forbidden corrupt practice."

The learned advocate submitted that the criticisms of the Congress party in Ext 2 which were at the instance of a private individual in this case and not even by a party, did not over step the legitimate bounds. In my opinion the contention is correct. The other case cited on behalf of the respondent i.e., the case of *Shankar Tripathi versus Returning Officer Mirzapur* and others reported in 2 E L R page 815 has got no relevancy to the point under consideration. There it was held that asking Muslims to vote for the Congress on the ground that if they would not vote, they would be turned out and would have to go to Pakistan was not a corrupt practice within the meaning of section 124(5) (old Act).

9 Clause 2 of this Section reads as follows —

"undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the free exercise of any electoral right"

There are provisos to this Clause but in the present case we are not concerned with the same. I have already mentioned above the statements of the Maulana contained in Ext 2 and do not find anything therein to bring it under Clause 2 as well.

10 Even assuming for argument's sake though not admitting that the leaflet offended the provisions of either Clause 2 or 3 or 4 of Section 123, let us see if the allegation of the



petitioner about its distribution by the respondent or his agents Mohan Das and Ahmuddin is true. It may be noted that the only act alleged to have been committed by the respondent or his agents in this respect is about distribution of the leaflet. I have already stated the case made out by the petitioner originally when he presented the petition and the subsequent amendment made on 16th July 1957. Even after the amendment, the allegation still remains too general. No doubt the dates and places have been mentioned in respect of such distribution but all the three namely respondent No. 1, Mohan Das and Ahmuddin are purported to have distributed such leaflets at all the places namely Ranchi, Bargain and Katamkuli on all the dates mentioned therein. There is nothing specific to show which of the aforesaid three persons distributed the leaflet at which place and on which date. In this connection I would first deal with the evidence of the petitioner himself though he has been examined as PW 23 as it will facilitate scrutiny of the other witnesses on this point. The petitioner stated that he did not himself draft the election petition, that Mr. Hari Krishna Lal, Pleader, M.I.C. did it for him and whom he holds a good lawyer on election cases. He also stated that he himself had supplied the facts to him for the drafting. Further statement of this witness is that except the matters in paragraph 1 to 3 (relating to the candidates, dates of counting and result and dates of polls) the matters in other paragraphs of the petition were not true to his knowledge. He also stated that he had disclosed sources of his information in respect of matters in the other paragraphs when he presented his election petition and had also mentioned therein the dates of the incidents in other paragraphs but not the places. He also stated that he made the allegations in the petition after knowing the evidence in respect of the same and it was not that after presenting the petition he collected the evidence. He also stated that he did not read the provisions of Section 83(b) of the Act before presenting the petition so he could not say whether or not he complied with the same. He, however, stated that after presenting the petition he gathered more evidence to support the allegations. In his examination in chief he stated that he had learnt from Usman (PW 3), Shafi (PW 7) and others of Doranda, Salim Ansari (PW 14), Sahju Ohdar (PW 15) and others of village Neori and Maniruddin (PW 20) and Sk. Qasim (PW 21) and others of village Katamkuli that they had received such leaflets and that PWs 14 and 15 had received them at Bargain. It may be noted that in the election petition even after amendment, there was no such mention about anyone of Neori having got the leaflet at Bargain. The only allegation was that such leaflets were distributed at Ranchi, Bargain and Katamkuli. In cross examination the petitioner stated that he had not gone to the aforesaid persons but they themselves had gone to him to give such information which itself shows how far the witnesses were interested in the petitioner. When further pressed he stated that those persons were Maniruddin (PW 20) and Sk. Qasim (PW 21). It may be noted that PW 20 stated that he had given the information to the petitioner about a month after the result and PW 21 denied to have given any such information to the petitioner. When pointedly asked about information in respect of the allegation in this respect made in amendment petition of 16th July 1957, he gave the names of Md. Mustakim (PW 8), Salim Ansari (PW 14), Sahju Ohdar (PW 15) and Khanuddin (PW 16). The petitioner also stated that he filed that amendment petition about a week after receipt of the informations. I may note here that PW 8 claimed to have given the information about one and half to two months after the result, PW 14 before the result, PW 15 one and half months after 4th March 1957 and PW 16 two and half months after the alleged receipt on five days before he voted on 12th March 1957. The petitioner also stated that he came to know about the dates and places in respect of Ranchi from Nazir Ahmad (PW 9) and Md. Hashim (PW 10). It may be noted that PW 9 denied to have given any such information and PW 10 stated that he gave the information 15 to 20 days after 24th February 1957 when he claimed to have received such a leaflet. In his examination in chief the petitioner came forward to say that leaflet like (annexure Y of the petition) had been widely distributed among the Muslims during the election days and that it created a very bad effect on the Muslim voters against the Congress candidates and before which they were supporters of the Congress. In cross examination he admitted that he did not see any such leaflet being distributed. He also stated that he first learnt about distribution of such leaflets on 23rd February 1957 and 24th February 1957 and got one on 25th February 1957. He also stated that he had read it but it is curious that no complaint was made by him before anyone in this respect. The petitioner also admitted that Mr. S. M. Ahmad and Sk. Mohiuddin had also contested the Ranchi Assembly seat for which Ram Ratan Ram and Bharat Mahto were the Congress candidates. He also stated that no other leaflet either in Urdu or in any other language was distributed by any other candidate either for the Assembly seat or for the seat concerned and that he did not see any such leaflet being distributed which is difficult to believe. No doubt the respondent stated that for the first time he was shown a leaflet like Ext. 2 either a few days before or during polling of which he was not sure and that he had got the gist explained but he stated that as he was not interested so he filed it. He also stated that the petitioner was the only Muslim candidate for the seat concerned. These statements of the respondent cannot lead to any inference that any such leaflet was at all distributed by him or anyone on his behalf. Regard being had to the fact that there were two Muslim candidates opposing the Congress candidates for the Ranchi Assembly seat, the possibility of distribution of such leaflet on their behalf cannot be ruled out, if at all any such leaflet came in circulation at Ranchi. It is also worthy of note that except Ext. 2 produced by the

petitioner, no other witness coming to depose on the point has produced any such leaflet. The evidence of the petitioner, as it is, is of no value as he has admitted that he did not see any such leaflet being distributed.

11 Besides, the petitioner examined as many as 16 witnesses to say that such leaflets had been handed over to them by the respondent or Mohan Das or Alimuddin and that on reading or getting over the same they decided not to vote for the Congress candidate though before that they were supporters of the Congress. I may at the very out set state that it is not the number of witnesses but the quality of their evidence that counts for coming to a decision. We have, therefore, to see how far the evidence of these 16 witnesses is worthy of credit. I may mention here that of these witnesses PW 1 Sardar Abdul Rab, P.W. 2 Md Hanif, P.W. 3 Md Usman, P.W. 7 Md Shafi and P.W. 19 Md Karim belong to Mahalla Doranda where the petitioner resides, P.W. 5 Md Akbar Ali and P.W. 8 Md. Mustakim live in Mohalla Hindpuri and P.W. 9 Nazir Ahmad *alias* Nazir Alam and P.W. 10 Md. Hashim live on the Church road of this town. P.W. 11 Khodabux belongs to village Barlatu near this town and claimed to be a chaukidar of village Bargain to which P.W. 22 Md Mustakim belongs. This village Bargain is about 5 miles off from Ranchi. P.W. 14 Salim Ansari and P.W. 15 Sahju Ohdar belong to village Neori while P.W. 20 Md Maniruddin and P.W. 21 Sk Qasim belong to village Katarkuli which is at distance of about 14 miles from Ranchi. P.W. 16 Khairuddin belongs to village Mesia. Of these PWs 1, 5, 7, 9, 14, 15, 16, 20, 21 and 22 admitted that they belong to the Momun community. P.W. 1 described himself as the Sardar of the Momun Jamait. P.W. 5 also stated that he is a member of the Momun Jamait and so are all the Momins. He however showed his ignorance that the petitioner was the Secretary of the Jamait in 1957 or that the Momun Jamait did anything for the petitioner in the election concerned. P.W. 7, however, admitted that the petitioner was the Secretary of the Momun Jamait of the district of Ranchi in 1957. P.W. 2 stated that he belonged to the Quraishi community while P.W. 8 claimed to belong to the Idrisi Jamait. P.W. 14 claimed to be the Secretary of the Weavers' Co-operative Society of his village Neori and P.W. 15 claimed to be the Sardar of the Momins of 12 villages. He admitted that there is a Momun Jamait for the whole of the district of Ranchi and Momins of the district are under its influence and control. P.W. 3 claimed to be a member of the Doranda Notified Area Committee and of the Doranda Ranchi Joint Water Works Committee but admitted that he was a worker and polling agent of the petitioner. P.W. 19 also admitted that he was a worker for the petitioner at the election concerned till the conclusion of the Polls. It may be noted that the petitioner stated that for the first time he gave a list of his witnesses on 6th December 1957 and I may note that the names of PWs 1, 3, 5, 7, 8, 10, 20, 21 and 22 do not find mention therein. I may also mention that PWs 1 to 5 were examined on 14th July 1958, PWs 7, 8, 9, 10 and 11 on 15th July 1958 and PWs 14, 15, 16, 19, 20, 21, and 22 on 16th July 1958, the petitioner himself having been examined on the 17th and 18th July, 1958. I may also mention that on the 14th and 15th I could not devote the whole day on this case and had to stop further hearing at about 2.30 or 3 P.M. on the plea on behalf of the petitioner that more witnesses had not come on those dates. It may also be mentioned that each one of these witnesses stated that he first came to know that he was a witness in the case when summons was handed over to him. Except PWs 14, 15, 16, 21 and 22, the others stated that the petitioner himself had handed over the summons to them.

12 I now propose to examine the evidence of the witnesses in this respect placewise. The polling in the town took place on the 25th and 26th of February, 1957. As already said above PWs 1, 2, 3, 7 and 19 belong to Mahalla Doranda. The evidence of P.W. 1 is that two days before the polling he received a leaflet like annexure 'Y' from Alimuddin. In cross-examination he stated that he was not a supporter of any candidate and that at the same time the election for the Assembly seats were also being held at Ranchi and similar leaflets were distributed among the voters of both the elections. It is significant that he stated that when the petitioner handed over summons to him on the day preceding his deposition, he had no talk with him about what he was to depose. P.W. 2 also came to say that three days before the polling he had received a similar leaflet from Alimuddin. In cross-examination he stated that he did not remember the contents and that he had received it on the *vasta* in Doranda. He also stated that he did not know if any other leaflet was distributed in the election concerned. He also stated that on the same day he had informed P.W. 1 about it and thereafter before his examination he did not tell about it to anyone else. He stated that he received summons two days before his examination and at that time on his enquiry the petitioner had told him that he was required to depose on distribution of the leaflet, which fact is rather significant. P.W. 3 also came to make the same statement. In cross-examination, however, he stated that he had received the leaflet from Alimuddin on 23rd February 1957. It is significant that he stated that he had handed over that leaflet to the petitioner on 27th February 1957 after putting his initial thereon as a proof of his having done so. He also stated that annexure 'Y' was not that leaflet and it is curious that no leaflet initialed by him has been produced. I have already said above that he admitted that he was a worker and polling agent of the petitioner. It is also significant that he stated that when he received the summons from the petitioner he had no

talk with him about what he was to depose. P.W. 7 came to say that two days before the polling, Mohan Das had handed over such leaflet to him from a jeep when Alimuddin and some others were also with him. In cross-examination he stated that the jeep was standing at the chowk and that before that day, he had no occasion to see Mohan Das. He stated that at that very time, he learnt from Alimuddin that the person having handed over the leaflet to him was named Das. Alimuddin denied it and I do not see any reason why the witness would have made the enquiry or Alimuddin would have given out the name of Mohan Das. Further this witness stated that while the polling was going on, he met the petitioner on the way and had told him about Das having handed over such leaflet to him, though he stated that he did not tell him the date of receipt. According to him, he had received the leaflet at 11 A.M. or 12 A.M. He also stated that he had no talk with the petitioner about what he was to depose when the petitioner handed over the summons to him. P.W. 19 came to say that a day or two before he cast his vote on 25th February 1957, the respondent had handed over one such leaflet while he himself was standing at his shop. It may be noted that he has a cycle repairing shop at Doranda. He stated that he did not know Urdu so he got it read over by his son Abdul Shahid aged about 35 years. He also stated that about a month after the polls, he told the petitioner about receipt of the leaflet from the respondent. I have already said above that he admitted that he was a worker of the petitioner at the election concerned but the circumstance under which he made this admission is interesting. At first he admitted the fact but subsequently denied it and then came to say that he was a worker for the petitioner for canvassing and to see if voters were going to vote for him. He also as others came to say that on hearing the contents of the leaflet he decided not to vote for the Congress though before that, he was inclined to vote for the Congress. It is difficult to believe that if that would have been a fact, he would have continued to work as a worker of the petitioner during the polls. Ext. A(1) is a receipt dated 18th February 1957 for Rs. 100 having been paid to him by the petitioner for election expenses. In cross-examination he stated that he had received the leaflet from the respondent at 8 or 8-30 A.M. when the respondent passed that way in a jeep or motor car which had stopped at about 40 steps from his shop and from there the respondent went on foot to his shop. He also stated that the respondent had then only one leaflet with him which is improbable. It is also significant to note that the witness purported to say that he had received summons on 18th July 1958 and that he had come to court on 14th July 1958 and 15th July 1958. Curiously enough the petitioner did not chose to examine him on any of those dates and he came to be examined on 16th July 1958. I have already said above that the names of P.Ws. 1, 5 and 7 do not find mention in the list of witnesses submitted by the petitioner on 6th December 1957.

13. P.Ws. 5 and 8 are witnesses from Mahalla Hindpiri. P.W. 5 is also a witness who claimed to have attended the marriage of Alimuddin which according to him took place on 22nd February 1957. He came to say that on the following day (23rd February 1957) Alimuddin had handed over such a leaflet to him. He, however, in cross-examination conveniently said that this was at his house when no other adult person was present. He, however, stated that this was on 24th February 1957 at 7 A.M. The evidence of this witness is thus self contradictory. It is also significant that he stated that he had no talk with the petitioner when the latter handed over summons to him. P.W. 8 on the other hand came to say that Alimuddin had handed over such a leaflet to him on 23rd February 1957 from a jeep car in which the respondent was also sitting. He gave the time as 5 P.M. and the place as Main Road near Ratan Talkies. He also stated that at that time the jeep was moving in slow speed and that there were many persons then on the road but he could not name any. He also stated that about one and a half to two months after the announcement of result, he had informed the petitioner about it. It is significant that he gave the date of receipt of summons from the petitioner as 23rd July 1958 and the date of his examination as 25th July 1958 though he was actually examined on 15th July 1958. He admitted that he was a member of the Congress till before the last Municipal election at Ranchi which took place in February, 1958 and that he had to resign as he stood as an Independent candidate. He also stated that when he received summons he had no talk with the petitioner. It may be noted that the names of none of these two witnesses find mentions in the list of witnesses submitted on 6th December 1957 by the petitioner.

14. P.Ws. 9 and 10 are from the Church Road, Ranchi. Both these witnesses came to say that on 24th February 1957 the respondent had handed over such a leaflet to them at about 8 A.M. at the Ranchi bus stand. P.W. 9 also stated that the respondent had distributed such leaflet to others also when he had about 200 leaflets under his arms and among those persons he named P.W. 10, Aziz Ahmad, Maqbool and Serajuddin. He stated that all these persons were known to him fullwell from before but those others are not witnesses in the cases. It is significant that he never told the petitioner about it. It is also significant that he purported to say that he received summons from the petitioner on 13th July 1958 when he first came to know that he was a witness in the case. He, however stated that he did not read the date on the summons but the petitioner told him to come on 15th July 1958 for which date no summons was issued to him. P.W. 10 on the other hand came to say that the respondent had handed over such a leaflet while the respondent was standing

on a jeep near the bus stand. He also stated that he did not know Urdu and had got the leaflet read over to him by P.W. 9. He also stated that 15 to 20 days thereafter he had told the petitioner about it, but curiously enough, his name does not find mention in the list of the witnesses submitted by the petitioner on 6th December 1957. He also purported to say that he received summons on 13th July 1958 from the petitioner in front of the shop of P.W. 9 and that on his enquiry the petitioner had told that he was required to say in court about what he had informed him in respect of his receiving the leaflet from the respondent on 24th February 1957. He also stated that he had got the summons read over to him and that he was required to come on 14th July 1958. He also stated that on 14th July 1958 he had come to court at about 11 A.M. but at about 2.30 P.M. the petitioner asked him to go away saying that he would not be examined on that date. He claimed to have been present at the bus stand as the buses of his Malik leave near about that hour. Both P.Ws. 9 and 10 have got their shops on the Church Road and P.W. 10 stated that P.W. 9 had gone to the bus stand to see off some passenger.

15. Next the evidence consists of about distribution of such leaflets at village Bargain and the first witness in this respect is P.W. 11 who belongs to Bariatu but claimed to be the chaukidar of village Bargain. He came to say that in village Bargain there were more than 400 Muslim voters. He came forward with altogether a new story which is not to be found in the election petition itself. He stated that two or four days before the polling Alimuddin had read out one leaflet at a meeting held in Bargain which is one mile off from Bariatu. He stated that he did not know Urdu. He also stated that a day or two later, Alimuddin distributed such leaflets in the Elaka by a motor when the respondent was also therein. In cross-examination he stated that there were more than 100 people at the meeting but he did not remember the date but it was in the month of February. He also stated that his duty was to inform about meetings held in his Elaka and asserted that he had given information about the meeting at the thana, as also about the persons who had addressed that meeting on the following morning at 8 or 9 A.M. and that A.S.I. Dubey had made an entry in the station diary in respect of the same. He, however, stated that he never told the petitioner about the meeting or the leaflet having been read over or distributed. The circumstances under which he came to depose is also interesting. He stated that on 13th July, 1958 he had come to this court compound when the petitioner handed over summons to him and when he first came to know that he was a witness in the case. He also stated that he did not remember the time of the receipt of summons but stated that some clients and lawyers had come to court. He also stated that he had come to court to see the Head Clerk of the Police office as he had not got his pay, forgetting that 13th July, 1958, was a Sunday. He also stated that in the summons he was required to attend on 14th July, 1958 and asserted that he had come to court at 11 A.M. and had left at 4 P.M. It is curious why he was not examined on 14th July, 1958 and came to be examined on 15th July, 1958. R.W. 2 B. N. Sinha is the Officer Incharge of the thana concerned and he stated that no entry as alleged by P.W. 11 was to be found in the station diary and that there was no Sub Inspector or Assistant Sub Inspector named Dubey at the Ranchi Sadar P.S. He also stated that P.W. 11 was dismissed as a Chaukidar about a month before; R.W. 2 having been examined on 22nd July, 1958. The only witness from village Bargain examined by the petitioner is P.W. 22. His evidence is that on 4th March, 1957 Alimuddin handed over one such leaflet to him in presence of the respondent in his village. He, however, stated that he never told the petitioner about it. It may be noted that he was examined on 16th July, 1958 and he stated that only on that day at about 10 A.M. in the bazar in front of the criminal court, he first learnt that he was a witness in the case when he received summons from P.W. 21 (who is of village Katankuli) in presence of the petitioner, Md. Akbar and some others while he himself was going on a cycle to the Payada Goli where he serves in a school. He also stated that P.W. 21 told him that he was required to depose on distribution of the leaflet. The other witnesses are P.Ws. 14 and 15 who belong to village Neori which is about 3 miles from Bargain and P.W. 16 who belongs to village Meera. P.W. 14 came to say that on 4th March, 1957 Alimuddin had handed over such a leaflet to him at village Bargain where he had gone on that day and that the respondent and some others whom he did not know were then with Alimuddin. He stated that to his knowledge the contents of the leaflet were not true but since it was purported to have been issued by the Amarat Shariya so he took them to be correct. He, however, stated that such an impression would not have come had it been issued by anyone in his personal capacity. He at first stated that he never informed the petitioner about it but subsequently he changed his statement and stated that he had told him after the polls and before announcement of the result that on 4th March, 1957 he had received such a leaflet. It is significant that he stated that he did not give the leaflet to the petitioner. He also stated that many other leaflets had been distributed by the different candidates. He also purported to say that for the first time on 15th July, 1958 at about 2 P.M. he learnt that he was a witness in the case when the court peon went with summons and obtained his signature on the duplicate of the summons. It may be noted that the petitioner did not get summons served on this witness or any other on this point through court. He also stated that he had received summons to attend on 16th July, 1958 when he was actually

examined but the summons produced by him showed the date for his attendance as 14th July, 1958. P.W. 15 came to say that on 11th March, 1957 he had gone to Bargain to his sister and that one person whose name he did not know handed over such a leaflet to him. He stated that he is illiterate so he got the leaflet read over to him by P.W. 14. He also stated that about a month and a half later he informed the petitioner about it. He also stated that only the preceding day (he also having been examined on 16th July, 1958) he first came to know that he was a witness in the case when Bharu Lohar of his village handed over summons to him. It is not known how Bharu Lohar got the summons to serve on the witness. This witness also stated that he had got summons in which the date of his appearance was 16th July, 1958 read over. He also stated that the summons was with P.W. 14 which is rather significant. I may note here that 4th March, 1957 was a Monday. P.W. 16 also came to say that on a Monday about five days before he cast his vote on 12th March, 1957 he had gone to a relation in village Bargain and in the evening a man of Bargain whose name he did not remember gave such leaflet to him. He also stated that the respondent was present and getting such leaflets distributed. He too is illiterate and stated that he got it read over. He also stated that about two or two and half months later he had told the petitioner about it. He, however, could not give the name of the person from whom he got the leaflet read over. He also was examined on 16th July, 1958 and stated that day before yesterday (14th July, 1958) at about 10 or 11 A.M. while he was passing on the road in front of the criminal court, the Munshi of the petitioner handed over the summons to him saying that 16th July, 1958 was the date for his appearance. He denied that he was required to depose on 11th July, 1958 but produced the summons showing the date as 11th July, 1958 thereon. It is really surprising that P.Ws. 14, 15 and 16 all happened to be at village Bargain on the same day for visiting their relations the same time.

16 P.Ws. 20 and 21 who belong to Katamkuli came to say that they had received such leaflets in their own village. I have already said about that Katamkuli is about 14 miles from Ranchi. The evidence of P.W. 20 is that four or five days before the polls, Alimuddin handed over such a leaflet to him in presence of the respondent. In cross examination he stated that it was Monday or Tuesday after sunset at an orchard in his own village. He also stated that at that time the respondent and his other companions were on jeep. He further stated that he had told the petitioner about it about a month after at Ranchi bazar. Both these witnesses were also examined on 16th July, 1958 and P.W. 20 stated that only on that day, he came to know that he was a witness in the case when at about 10 or 11 A.M. the petitioner handed over the summons to him in Ranchi hat. He however, stated that he had no talk with the petitioner about what he was to depose. P.W. 21 also came to say that four or five days before the polls, Alimuddin gave such a leaflet to him when the respondent was sitting on a jeep. He, however, stated that he never told the petitioner about it. He also stated that only on the day he was examined, he came to know that he was a witness in the case when P.W. 20 handed over summons to him at Ranchi hat. He also stated that at the time of giving summons, P.W. 20 told him that he was a witness to say about distribution of the leaflets in the village. I have already said above that P.W. 22 who is of village Bargain stated that he had received summons from P.W. 21. I have also mentioned above that the names of these witnesses do not find mention in the list submitted by the petitioner on 6th December, 1957. We thus find that all the witnesses examined by the petitioner on this point are interested persons and the evidence of none of them is consistent or convincing. The manner in which they came forward to depose clearly shows that the petitioner quite indiscriminately and recklessly put all such persons in the witness box on whom he could lay his hands on and I have no doubt that they are all got up and tutored witnesses. In such circumstances, I feel it difficult to put any reliance on their evidence and find that the petitioner has hopelessly failed to prove that the respondent or anyone on his behalf had handed over any such leaflet to any of the witnesses on this point.

17 On the other hand the respondent (R.W. 1) Mohan Das (R.W. 4) and Alimuddin (R.W. 3) denied having distributed any such leaflet any day at any place or having seen one or the other or anyone on behalf of the respondent ever doing so. R.W. 4 also stated that he was incharge of the office of the respondent and did not go out of his office for any election work. No doubt the respondent stated in cross examination that for the first time he was shown a leaflet like Ext. 2 either a few days before or during the polling and that he had got the gist of the leaflet explained to him, but this cannot lead to any inference that the respondent or anyone on his behalf had distributed any such leaflet. No doubt also Alimuddin stated that he had worked for the respondent from the 17th or 18th February to 12th March, 1957 and used to go to different places and used to distribute leaflets and that he had occasions to go to Bargain and Katamkuli as well during election days and distributed leaflets in English, Hindi and Urdu in thousands on behalf of the respondent No. 1 but these statements also cannot lead to any inference that he had distributed any leaflet like Ext. 2. Regard being had to the concocted nature of the

evidence on the side of the petitioner, I see no reason to disbelieve the respondent and R. Ws 3 and 4. Considering the entire evidence and circumstances this issue is answered in the negative.

*Issue No 4(a)*

18 The definite case of the petitioner in the Election Petition is that on 26th February, 1957 at Ranchi respondent No 1 procured a jeep No BML 8112 for conveyance of electors to the polling booths for the purpose of casting their votes and that on the same day in the same jeep carried three electors namely Mulraj Purohit, Manilal Bhagat and Shrimati Davawanti Purohit to booths No 98 in the Ranchi Municipal office building at about 8.15 A.M. where those three electors cast their votes. It was further stated that immediately Rajdeo Tewary (P.W. 13) filed a written complaint (Ext. 1) before the Presiding Officer in whose presence as also before the Returning Officer the respondent admitted the fact saying that those three electors were his friends. The respondent on the other hand denied having procured the jeep for conveyance of electors to the polling booths for the purpose of casting their votes. He, however, admitted in his written statement about the lift to those three persons on the said jeep but denied that this act constituted a corrupt practice within the meaning of the relevant provision of law. Before I take up the evidence on this point I would like to mention the relevant provision of law in this respect. Clause 5 of Section 12<sup>a</sup> of the Act reads as follows—

‘The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person, for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under Section 25 or a place fixed under Subsection (1) of Section 29 for the poll.”

It is seen that the above provision prohibits and declares to be a corrupt practice the act of hiring or procuring of any vehicle or vessel by a candidate or his agent or by any other person for the conveyance of any elector other than the candidate himself, or the member of his family or his agent to or from any polling station and not the mere act of carrying or conveying any elector on any vehicle or vessel. Therefore, if the petitioner fails to prove the hiring or procuring of a vehicle or vessel, he by proving that some electors were carried or conveyed on a vehicle or vessel cannot establish a corrupt practice within the meaning of Section 123(5). As it will appear from my subsequent discussions, the petitioner in this case has failed to prove hiring or procuring of any vehicle or vessel. It is true that the best and undisputable evidence to prove the purpose of hiring or procuring is the evidence showing that actually voters were carried or conveyed. But the question of proving the purpose of hiring or conveying can arise only after hiring or procuring itself and the fact that some voters were carried or conveyed cannot by itself prove hiring or procuring. At this stage I would refer to the authorities cited on behalf of the respondent on this issue which do support the observations made above. In the case of *Medan Lal versus Zargham Haider* reported in AIR 1958 Allahabad page 596 at page 600 their Lordships observed as follows—

‘It is to be noticed that under Section 123(5) of the Representation of the People Act a corrupt practice consists in the act of hiring or procuring certain types of vehicles, by a candidate or his agent or by any other person for the conveyance of any elector to or from any polling station. A corrupt practice is, therefore, committed not by conveying the voters but by the act of hiring or procuring the conveyance.”

In the case of *Deo Sharan Singh versus Sheo Mahadeo Prasad* reported in 10 E.L.R. page 461 it was observed at pages 479–81 that the main ingredient of the corrupt practice is hiring and procuring and it is necessary to give full particulars of that as required by Section 83(2) of the Representation of the People Act. The learned Tribunal refused and placed reliance in making the aforesaid observations on the case of *Desai Baswaraj versus Dasankop Hasan Sab* reported in 4 E.L.R. page 380 which has also been cited before me. In the other case cited by the learned advocate for the respondent, the case of *Mastram versus Iqbal Singh* reported in 12 E.L.R. page 34 at page 56 it was observed as follows—

“The petitioner in order to succeed has to prove not only the purpose, namely conveyance of any elector but also the hiring and procuring which is the main ingredient of the corrupt practice.”

19 Coming to the evidence, as already said above, the definite case of the petitioner in the election petition is that on 26th February 1957 at Ranchi the respondent procured a jeep No BHL 8112 for the conveyance of electors to the polling booths for casting their votes but there is no evidence even worth the name to support the same. It may

be noted here that while the petitioner gave the date and place of the alleged procurement, he remained silent about the person from whom the alleged procurement was made. In his evidence the petitioner (P W 23), became more vague and contented by simply saying that the respondent had procured jeep BHL 8112, swallowing not only the alleged date and place of the alleged procurement but also the purpose alleged in his petition. He however, at first admitted that during the election campaign he saw the respondent constantly moving on that jeep, though subsequently he changed his statement by saying that he had seen so during the polling. The evidence of the respondent is that his friend Mr Kavrana of Bombay had placed that jeep of his along with his driver at his disposal for use during his election campaign and that he had not to pay for the use of the jeep or to the driver. He also stated that he used this jeep for visiting different places and villages within his constituency and his workers used to go on it for contacting voters to obtain their support. He denied that the jeep was procured for the purpose of carrying voters to or from any polling booth. He also stated that he arrived for the first time at Ranchi on 27th January 1957 and that after his arrival, the jeep was sent on to him to Ranchi by his aforesaid friend from Bombay. In the absence of any evidence on the side of the petitioner about procurement of the jeep for the purpose of casting votes, there can be no reason to disbelieve the respondent that the jeep was not procured for the purpose prohibited by law and that it was procured for the purpose of his election campaign. It must, therefore be held that the petitioner has signally failed to prove that the jeep was procured to carry voters. The fact, however, that Mulraj Purohit (R W 5), his wife, and Manilal Bhagat (R W 7) had gone on 26th February 1957 on that jeep with the respondent to the municipal office booth No 38 and had cast their votes there is admitted. We have therefore, to see if this act constituted a corrupt practice within the meaning of law for, it may be argued that though originally the jeep might not have been procured for the purpose of carrying voters, the moment some voters got carried on it to the polling booth for casting their votes and they actually cast their votes it would be deemed to have been procured for that purpose. I have already said above that it is the act of hiring or procuring of vehicle for conveyance of any elector that is prohibited by the law and not the mere act of carrying voters thereon. Even if the aforesaid argument be accepted, which as already shown above cannot be accepted, we have to see if those three voters were carried by the respondent for the purpose of casting their votes. The explanation of the respondent is that aforesaid three persons were his workers and had gone on the jeep with him as such and he specifically denied that he had carried them to get their votes cast. On the side of the petitioner, the evidence on this point consists of the statements of P W 6 Mr Srivastav who was the Presiding Officer at the booth concerned and Rajdeo Tewary (P W 13) who was the polling agent of the petitioner there, the petitioner himself having stated that he did not go to that booth on the day concerned and that he derived his informations in this respect from Ext C, the letter of the same date from the respondent to the Returning Officer and that the only other source of his information was Rajdeo Tewary. So far as P W 6 is concerned he simply stated that the complaint (Ext 1) was filed before him by Rajdeo Tewary. In cross examination he stated that as the Presiding Officer he had to send report of happenings at the booths to the Returning Officer and that on receipt of the complaint (Ext 1) he had talk with the respondent. Neither any such report has been brought on the record, nor any question in this respect was put to P W 6, Rajdeo Tewary also stated that he had filed Ext 1 before the Presiding Officer on 26th February 1957. The gist of this petition is that the respondent had taken the aforesaid three persons on his aforesaid jeep to that polling booth, that they had cast their votes and that on the question of the Presiding Officer, the respondent had given out that those persons were his friends. It was also stated therein that P W 13 had pointed out that besides being friends of the respondent, those three persons were also voters. From this petition two things are clear, firstly, that the jeep was of the respondent which suggests that it was not procured for conveyance of voters and that it was with the respondent from before, and secondly, that P W 13, had accepted those three persons as the friends of the respondent. P W 13 came to say that the respondent did not describe Mulraj Purohit or Manilal Bhagat as his worker or polling agent before the Presiding Officer. It is significant that no such question was put to the Presiding Officer himself. In cross examination, P W 13, stated that he knew Mulraj Purohit from before but not Manilal Bhagat. He showed his ignorance if they were workers or polling agents of the respondent. It may, however be noted that this witness could not deny that Mulraj Purohit and Manilal Bhagat were the workers of the respondent and the petitioner himself admitted that he had come to know that they were workers of the respondent. The evidence on the side of the petitioner therefore does not establish that the respondent had carried those three persons necessarily for the purpose of casting their votes. The evidence of the respondent himself is that the aforesaid three persons were his workers from before that day and that Mulraj Purohit and Manilal Bhagat had accompanied him on his rounds on the preceding day as well and that those two as also Mrs Purohit had gone with him in the morning concerned for rounds to the different polling booths. In this connection we have first to see if those three persons were really the workers of the respondent. The fact that Mulraj Purohit and Manilal Bhagat were the workers of the respondent has been admitted by the petitioner himself. Mulraj Purohit who was then

a partner in the Ranchi Stores which was located in the Budhia buildings, on the first floor of which the respondent had his office stated that he had worked for the respondent and had also procured electoral rolls for him. Ext G, is the challan dated 4th February 1957 supporting the same. He also stated that he worked as polling and counting agent of the respondent. His evidence also is that on 25th February 1957, he along with Manilal Bhagat had gone with the respondent on round to the different polling booths and that on 25th February 1957 the respondent had given him the authority (Ext D), appointing him as polling agent. This Ext D, shows that the respondent had given the authority on 25th February 1957 and which was presented before the Presiding Officer of Jagarnathpur booth No 51, on 26th February 1957. The fact that this Mulraj Purohit had acted as the polling agent of the respondent on 26th February 1957 at the Jagarnathpur booth is not disputed and the witness stated that he as also the Presiding Officer had put their signatures on Ext D on that date. He also stated that the petitioner had gone on that day to that booth in the afternoon and they both were present when the boxes were sealed and that both had returned on the same rickshaw. The petitioner could not deny this fact and gave an evasive reply that he did not remember about it. He (Purohit) also stated that on 26th February 1957, the respondent had gone to his office in the morning at 7.30 or 8 AM and was about to go on round when he (the witness) and Manilal Bhagat joined him. He further stated that his wife also enquired if she could go and on his enquiry the respondent told that she could. The witness further stated that then his wife also joined them on the jeep and they first went on that jeep to the booth in front of the criminal court building and then to the Municipal Office booth which is about two furlongs from the criminal court booth. He also stated that neither he nor Mrs Purohit nor Manilal Bhagat told the respondent that they were going to cast their votes. He also denied that the respondent had taken any of them to get their votes cast. He also stated that Ext D was written and signed by the respondent in his presence and that at the same time the respondent had written many other such authority letters. He denied the suggestion that Ext D, was given to him on 26th February 1957 or after protest by PW 13. No doubt he admitted that he did not work as polling agent of the respondent anywhere on 25th February 1957 and that he knew that one of the works of a polling agent was to see the closing of the boxes at the commencement of polls and to put his seals thereon but this cannot lead to any inference that Ext D, was given to him on 26th February 1957, specially when there is no evidence on the side of the petitioner to that effect. In view of Exts G and D, there cannot be any doubt that Mulraj Purohit was a worker of the respondent. Mandal Bhagat also came to say that he worked for the respondent at the election by canvassing taking the respondent to Jamudag and introducing him to his friends at Ranchi. He also stated that he worked as a polling agent which fact was not challenged. He also stated that he had on 21st February 1957 purchased an electoral roll for the respondent which is evidenced by the treasury receipt Ext G, (1). The fact that he had worked for the respondent during his election campaign is admitted in the Election Petition itself. He also stated that on 25th February 1957 he along with Mulraj Purohit had accompanied the respondent on round to the booths at Ranchi. In respect of 26th February 1957, he stated that he had gone to the office of the respondent from his house and that after a while he and the respondent came down to the stores of PW 5 in front of which the jeep of the respondent was standing. He also stated that he along with the respondent, Mrs Purohit and Mr Purohit sat on the jeep for going round the booths and first went to the booth opposite to the D C's court and then they went to the Municipal office booth. He too denied that he or Mr Purohit or Mrs Purohit was taken on the jeep to cast vote and stated that none of them had told the respondent that they were going to cast their votes. Ext F(2) is the voucher dated 28th February 1957 granted to Mohan Das for his expenses in going to Jamudag and for his food and incidental expenses. In cross examination he stated that he as also Mr and Mrs Purohit used to live in the Commissioner's compound and that three or four days before he had come to know that he had to cast his vote on 26th February 1957 at the Municipal office booth. He also stated that he did not work as polling agent anywhere on 25th February 1957. Regard being had to Ext G(1) and the admission in the petition there can be no doubt that this witness also was a worker of the respondent from before the day concerned. Both the respondent and Mulraj Purohit stated that Mrs Purohit was also a worker of the respondent and had canvassed among the women voters. No doubt none of these two had accompanied Mrs Purohit during such canvassing but this alone cannot disprove their statements, specially when there is no denial on the side of the petitioner. The evidence of the respondent is also to the same effect. The fact that the respondent did not carry those three persons to get their vote cast and that he had no knowledge that they were going to cast their vote is amply supported by Ext D(2), and the conduct of the respondent in addressing the letter Ext C to the Returning Officer. It may be noted that on 25th February 1957, the respondent gave a letter of authority (Ext D1) appointing Md Idris Khan as his polling agent for booth Nos 37 and 38 at the Municipal office building i.e., for 25th February 1957 and 26th February 1957. This Ext D(1) was presented on 25th February 1957. Ext D(2) is another letter in respect of booth No 38 given on 26th February 1957 to the same person and which was presented by him on that day. The evidence of the respondent is that this Ext D(2) had to be issued as he was told that the Presiding Officer



wanted a fresh letter of authority for 26th February 1957 which fact was also confirmed by the Presiding Officer. P.W. 13, also admitted that on 26th February 1957 at the booth concerned the respondent had written one letter of authority appointing a polling agent for that booth, though he stated that he could not say in whose favour it was. There can, therefore, be no doubt that Ext. D(2) was written by the respondent at the booth concerned in the morning of 26th February 1957 and shows that he had gone to that booth to supervise his election work and not that he had carried the three persons on the jeep for getting their votes cast. Ext. C, is the letter from the respondent to the Commissioner, Ranchi Division (who was the Returning Officer) purported to have been typed at 9 A.M. on 26th February 1957 which had been handed over to the Commissioner the same day. The evidence of the respondent is that he had gone with Ext. C to the office of the Returning Officer at 9 A.M. but since he was on tour and returned the same afternoon so he handed it over to him between 4 and 6 P.M. the same day. In this letter the respondent clearly mentioned that he had been going on round of the 21 polling stations in the town on the preceding day and on that day (26th February 1957). He also stated that on the preceding day he was accompanied throughout by Mr. M. L. Bhagat and M. Purohit who were his friends and supporters. He also stated that since the initiation of his election campaign in Ranchi town, Mr. Bhagat and Mr. and Mrs. Purohit had been his active supporters and friends in his campaign and that Mr. Bhagat and Mr. Purohit were also his polling agents. Further statement is that on the morning concerned, he had started from his office in the Budhia building to go on his rounds to the various polling stations with the aforesaid three persons and when he reached polling booth No. 98 at the Municipal office building, he spent his time there issuing letter of authority to his polling agents and supervising the issue of slips by his volunteers and that in the meantime Mr. and Mrs. Purohit and Mr. Bhagat who happened to be voters in that locality went and cast their votes. Further statement is that it was pointed out to him then by the Presiding Officer that he should not have carried his friends to the booth and that he (respondent) had explained the actual circumstances to him and that he (Presiding Officer) had advised him that these friends should return on their own and which they did. The fact that the respondent immediately after the incident detailed the correct circumstances in which the three persons happened to go with him on the jeep to the booth concerned shows his bonafides and by no stretch of imagination it can be said that the evidence of the respondent or R.Ws 5 and 7 is the outcome of an after thought. The contents of the letter clearly show that the respondent had neither the intention nor the knowledge that those three persons had gone with him to cast their votes or that he had carried them there for that purpose. Unless it is shown that the respondent had any intention of carrying any voter on the jeep for getting his vote cast, he cannot be deemed to have committed the corrupt practice by the mere fact that those three voters got carried by him inadvertently and cast their votes. In the present case there is complete absence of evidence to establish such an intention. Rather, the evidence on the record establish beyond doubt that the respondent had neither such an intention nor any knowledge of the same. Under the circumstances this issue also is answered in the negative.

#### Issue No. 4(b)

20. The case in the election petition is that the respondent had paid Rs. 300 as reward to Subodh Mishra the editor of the Hindi weekly "The Swarnrekha" for indulging in all sorts of nefarious and false propaganda against the Congress candidates including the petitioner and that in pursuance of this conspiracy, the said Subodh Mishra issued a questionnaire (annexure X of the petition) against Ram Ratan Ram a Congress candidate for election to the Bihar Legislative Assembly from the Ranchi constituency which formed a part of the constituency concerned and that the questionnaire was calculated to impair and injure the reputation of the Congress candidates knowing full well that the allegations contained therein were false and would materially affect the result of the election of the petitioner and which in fact had substantially affected the result of the election in the election. It may be noted that no date of such payment was mentioned in the petition and neither the alleged questionnaire has been proved nor anything has been shown therein to affect the petitioner nor any other publication in support of the allegation has been produced. On behalf of the respondent not only the fact of payment of Rs. 300 but also another payment of Rs. 200 through Mulraj Purohit (R.W. 5) to Subodh Mishra were admitted but there is nothing to show that these payments were for any purpose as stated in the election petition. The only witness on behalf of the petitioner on this point is P.W. 4 Ramjilal Vilay. He came to say that 15 to 20 days before the polling, he had seen the respondent in the office of the "Swarnrekha" when the respondent handed over Rs. 300, to Subodh Mishra saying that it was for what would be published in his paper. I have already said above that the polling began on 25th February 57, so, according to this witness, the payment was made sometime between the 5th and the 10th of February, 1957 and that it was for some publication in the future. I have already said above that no such publication has been produced, much less proved. The annexure "X" was not purposely proved because the petitioner admitted that it was a publication of 2nd January 1957, (in fact, according to the respondent, of 3rd January 1957). The alleged payment

could not, therefore, be for that publication. I have also said above that nothing affecting either the reputation of the petitioner or his election has been shown to contain in that annexure. In cross-examination, P.W. 4 stated that after the polls he had told the petitioner about the payment and as also that it was 15 to 20 days before the polling. He, however, stated that he did not make any note about it. He also stated that he had gone to the office of the "Swarnrekha" for getting something printed but did not place orders for the same. He admitted that he was a worker for the Congress during the last election and so was his brother but not for any particular candidate. He also stated that only on the preceding day he had received summons through the petitioner and then came to know first that he would be required to depose in the case. He, however, stated that neither he asked nor the petitioner told him what to depose. It is significant that he stated that no one else was present when the payment was made. The evidence of the witness speaks for itself and there cannot be any doubt that he is a tutored witness. Moreover, his evidence does not at all support the allegation of the petitioner. The evidence of the petitioner himself is that he learnt from P.W. 4 about the payment. He also stated that there was a publication in the "Swarnrekha" against the Congress and that the publication created bad effect against the Congress candidates. No such publication was, however, brought on the record by him. In cross-examination he stated that he did not know the date on which the payment was made, though he stated that P.W. 4 had told him that it was 15 to 20 days before the polls. He also stated that he had no other source of information and that the basis of his allegation in the petition was the information from P.W. 4. He also stated that before making the allegation he did not check up with annexure 'X'. It is significant that he admitted to have mentioned the name of Subodh Mishra in the list of witnesses submitted by him but he did not dare to examine him. He, however, at first admitted that P.W. 4 was his worker but subsequently changed his statement by saying that he was not his worker but a worker for the Congress. He further admitted that he had paid Rs. 100 to P.W. 4 for his wages and expenses for working for him in the election concerned. There can, therefore, be little doubt that P.W. 4 is not only an interested person but also his evidence is unworthy of credit. On the other hand, the respondent denied to have made any such payment to Subodh Mishra for indulging in any sort of nefarious and false propaganda against the Congress candidates or the petitioner. He admitted to have made the payments for publishing his election manifesto and supporting his candidature but denied that he had ever been to the office of the "Swarnrekha". He also denied to have made any payment for publishing the annexure "X" and stated that he never had anything to do with its publication. He further stated that Subodh Mishra did not do anything else for him. R.W. 5 Mulraj Purohit also stated that Rs. 200 was paid through him to Subodh Mishra for carrying propaganda in favour of the respondent through his paper and by canvassing. Under the circumstances this issue is also answered in the negative.

#### Issue No. 4(c)

21. Admittedly R. W. 7, Manilal Bhagat is the Welfare Officer of the Associated Cement Company Ltd., Khelari but there is no evidence even worth the name to show that it is a Government concern or that he was a Government servant. R.W. 7 himself denied that he is a Government servant and there is no evidence even worth the name to show that he is so. It is, however, admitted that R.W. 7 had worked for the respondent in the election. The issue in the circumstances is decided against the petitioner.

#### Issue No. 4(d)

22. This issue consists of two parts and I will deal with each part separately. Originally the case of the petitioner in his Petition was that respondent No. 1 had paid Rs. 200 to Alimuddin Ansari of Hindpiri for meeting his marriage expenses after getting an assurance that the said Alimuddin and his family members would vote for him, that the respondent himself attended the marriage function, that Alimuddin was given further money by the respondent presumably to purchase votes and that Alimuddin was seen canvassing for the respondent offering to pay Rs. 5 per vote on 24th February 1957 and 25th February 1957 at Ranchi. By amendment petition dated 20th September 1957, the petitioner got the following added between "Rs. 5 per vote" and "on 24th February 1957":

"to voters particularly to Amanatulla, Akbar Ali and Md. Reaz of Hindpiri, Ranchi and Sk. Nezam, Sk. Zafir and Mukul Pahan of village Bargain P. S. Sada district Ranchi."

One further statement below that para. was added as:—

"that a sum of Rs. 200 was paid by M. R. Masani to Alimuddin Ansari in presence of Abdur Rab Sardar, Akbar Ali, Md. Amanatulla, Habib Khan which was offered to many voters particularly to Amanatulla, Akbar Ali, Md. Reaz, Sk. Nezam, Sk. Zafir and Mukul Pahan."

It may be noted that the petitioner remained all through silent about the dates in respect of either the alleged payment of Rs. 200 to Alimuddin for his marriage expenses or the date of the further alleged payment which contravene the provisions of Section 83(b) of the Act and on that ground alone the allegations were liable to be struck off. I may, however, note

here that the only evidence led by the petitioner was in respect of the alleged payment of Rs. 200 to Alimuddin on the day of his marriage. As already said above, the case of the petitioner even after the belated amendment as late as on 20th September 1957 stands that the payment was made for meeting his marriage expenses after getting an assurance that Alimuddin and his family members would vote for him. It must be noted here that in the Petition, it is not the case of the petitioner that the amount had been paid for any vote of Alimuddin or of his family members. I shall now take up the evidence in respect of this alleged payment. At the outset, I may note that it has not been shown on behalf of the petitioner that Alimuddin or any member of his family was a voter in the constituency concerned. The evidence of the petitioner himself is that he did not at all till the day of his examination verify if Alimuddin or any member of his family was a voter in the constituency concerned. On the other hand, the respondent produced a certified copy of the electoral roll (Ext. H) showing Alimuddin, his father and his wife as voters from village Sarle in Burmu P.S. i.e. in the Ranchi West Constituency. That being so, it is absurd to think that the respondent would have made any payment to Alimuddin for marriage expenses after getting an assurance that Alimuddin and his family members would vote for him or he would have made any payment to Alimuddin for his vote and votes of his family members. The witnesses on the point on behalf of the petitioner are P.W. 1 Sardar Abdur Rab and P.W. 5 Md. Akbar Ali. I have already made some comments above with regard to these witnesses and have also stated that the name of neither finds mention in the list of witnesses submitted by the petitioner on 6th December 1957. The evidence of P.W. 1 is that he had attended the marriage of Alimuddin which was held on 22nd February 1957 and that it was a Friday. He also stated that the respondent was present there and had handed over two hundred rupee notes to Alimuddin saying that he was paying for his vote and for the votes of his people. In cross-examination he stated that he knew Alimuddin from two or three years before, that he had been invited orally by Maqsood the father-in-law of Alimuddin a day before and that the marriage was with *Rokhsati* but according to him the marriage had taken place at the house of Alimuddin himself which was adjacent to the house of Maqsood. He admitted that the usual custom is that *Nikah* with *Rokhsati* is held at the house of the bride. According to him the *Nikah* had taken place at 2 P.M. but he was not present. He further stated that he remained at that place for about half an hour and left after taking his food. He also stated that the feast started about half an hour after his arrival and that with him about a dozen people had taken dinner. Curiously enough he could not name any, though P.W. 5 stated that he and P.W. 1 were known to each other from four or five years before. According to P.W. 1, the respondent had gone to the house of Alimuddin at 6-45 or 7 P.M. and had stayed there for about 15 minutes. He also stated that the respondent did not sit there and during the period remained standing in the room talking and after he went away the feast started. I may note here that the case of the respondent is that the marriage had taken place on 24th February 1957. When a suggestion was given to this witness that it was not a fact that the marriage of Alimuddin took place on 22nd February 1957, the witness volunteered that it was noted in the register of Sufi Jamali. The respondent immediately got the marriage register maintained by Sufi Jamali called for and the entry (Ext. E) shows that the marriage had taken place on 24th February 1957 (Sunday). This P.W. 1 also stated that he had informed the petitioner two or three days after and asserted that the amount was not paid for marriage expenses but for votes. According to him, the respondent had gone alone. It appears that the respondent was absolutely a stranger to this town and it is improbable that he would have gone to the house of Alimuddin without the aid to anyone as guide. He also stated that after informing the petitioner, he did not tell about this to anyone else till before he was examined in court. He, however, did not remember if he had told the date to the petitioner. P.W. 5 also came to say that he had attended the marriage which had taken place on 22nd February 1957 and that it was a Friday. He further stated that he had gone there at about 7 P.M. and about 10 minutes later the respondent arrived there and gave the amount to Alimuddin for his vote and also for votes of his people. It was argued that the witness stated that he was related to Alimuddin who was a cousin of the father-in-law of his younger brother Nuruddin and as such he must have attended the marriage. It may, however, be noted that the witness admitted that he was not present at the *Nikah*. If he was really an invitee living in the same Mohalla Hindpiri, it is improbable that he would not be present at the important ceremony of the *Nikah* which admittedly took place in the afternoon. Further evidence of P.W. 5 is that there were 10 to 12 persons who had gone to partake the dinner and that they were all present when the respondent arrived. According to him among those were Amanatulla (P.W. 17), Habib Khan, Sardar Abdur Rab, Nurul Hoda (the son of the landlord of the house of Alimuddin and Maqsood) and Wahab Azad (P.W. 8 an admitted worker of the respondent) all of whom were present at the verandah when the respondent arrived. It may be noted that Amanatulla is a witness in the case but he did not speak a word on this point. Habib Khan also could not be examined by the petitioner as he was spotted in the court room on 14th July 1958 when these two witnesses were being examined and which Habib Khan stated that he was not a witness in the case and had not received any summons. Nurul Hoda also has not been examined. Further evidence of P.W. 5 is that the talk between Alimuddin and the respondent had also taken place in the room attached to the verandah where only three or four persons namely Alimuddin, Habib Khan, Amanatulla, Sardar Abdur

Rab and the witness were present from before. He thus made self contradictory statements. He also stated that on arrival, the respondent went to the room but did not sit there and talked standing as he was in haste. According to him, the respondent remained there for about 10 minutes and Alimuddin, after getting the amount, had given out that he would try to get votes for the respondent and give his own vote also to him. He also stated that about the payment he had told Mahir Ali and Abdul Rahman after the result of the election was announced and thereafter till the day of his examination he did not tell anybody about it. Neither Mahir Ali nor Abdul Rahman is, however, a witness in the case. The evidence of the petitioner himself is that he had learnt from P.W. 1 that the respondent had paid Rs. 200 to Alimuddin at his house at the time of his marriage for his vote and for other votes of his family. In cross-examination he stated that the basis of his statement in the Petition was the information from P.W. 1 and three others. Those three others also are not witnesses in the case nor their names were disclosed. It may be noted that in his examination-in-chief, the petitioner mentioned only P.W. 1 as his informant in this respect. According to the petitioner, the ceremony was only *Nikah* and not a regular marriage i.e. *Nikah* with *Rokhsati* and stated that by "marriage function" he meant "marriage feast". He also stated that P.W. 1 gave him the information two or three days after 22nd February 1957 and that he had given him the date as 22nd February 1957 but it is curious that still he kept it a secret and did not mention in his Election Petition. We thus find that the evidence adduced on the point on behalf of the petitioner is quite unsatisfactory, unconvincing and unworthy of credit and regard being had to the manner in which P.Ws. 1 and 5 came to deposit and gave their evidence, I have not the least doubt that they are got up and tutored witnesses. On the other hand the respondent (R.W. 1), Alimuddin himself (R.W. 3), Mohan Das (R.W. 4) and Wahab Azad (R.W. 8) deposed that the marriage had taken place on 24th February 1957. Their evidence is supported by the entry Ext. E in the marriage register. No doubt Sufi Jamali himself has not been examined; perhaps the learned defence counsel, from his appearance and advanced old age took him to be too simpleton to be put in the witness box. Alimuddin, however, himself proved the entry and his signature and the signatures of the witnesses etc. appearing thereon. Of course Alimuddin stated that the bride also had put her signature though it is not a fact but on that ground alone the entry which appears on a register purporting to have been kept in the ordinary course of business in a regular way by a responsible Marriage Registrar cannot be brushed aside, more specially when the existence of which was pointed out by P.W. 1 himself. The respondent further denied that he ever paid Rs. 200 or any other amount to Alimuddin as alleged by the petitioner, though he admitted to have gone at about 9 P.M. to wish Alimuddin happiness on the occasion of his marriage. He also stated that at his hotel, Wahab Azad had informed him that the marriage of Alimuddin had been performed that afternoon and had suggested that the respondent should go there and so, saying that it was a good idea, he went with Wahab Azad there. He also stated that at that time he had no talk about election and added that it was purely a social call. It is improbable that anyone on the night of the marriage of a person would go to him for making a negotiation for votes and it is still more improbable that he would make any such payment so publicly in presence of so many persons for a purpose prohibited by law. Mohan Das (R.W. 4) and Wahab Azad (R.W. 8) also corroborated the respondent by saying that they had also gone there and that the respondent did not make any payment to Alimuddin. Alimuddin also stated that the respondent had gone to the house of Maqsood that evening at 8-30 or 9 P.M. and denied to have received any amount from him for his marriage expenses or after taking an assurance for his vote or for any vote of his family members either on that day or on any other day. He also stated that neither he nor any of his family members was a voter in the constituency concerned and that he and his family members were voters from the Lohardaga constituency (Ranchi West Constituency). He also stated that P.Ws. 1 and 5 did not attend his marriage feast. He also stated that the marriage was with *Rokhsati* and that his *barat* had come from his village home in Sarle Mahua Kudar. Regard being had to the fact that the petitioner kept a secret of the date of the marriage in his Election Petition, the fact that the marriage register which was introduced by P.W. 1 himself shows the date of the marriage as 24th February 1957 and the unsatisfactory and unconvincing nature of the evidence of P.Ws. 1 and 5, I see no reason to disbelieve the respondent and his witnesses on this point.

23. Coming to the second part of the issue, I have already stated above the case of the petitioner as was originally made out and as also the improvement made thereon by the amendment petition dated 20th September 1957. It may be noted that the petitioner did not make out a case in his Petition about actual payment of Rs. 5 per vote to any of the persons named in the amendment petition. Of those persons Md. Reaz, Sk. Nezam, Sk. Zafir and Mukul Pahan have not at all been examined nor any explanation has been offered for their non-examination. Only P.W. 5 Akbar Ali and P.W. 17 Amanatulla both of Hindpiri have been examined on behalf of the petitioner. I have already made some comments in respect of P.W. 5. P.W. 17 at first stated that he was not a worker for the petitioner and that he never got any money from him nor gave any receipt for the same. It was only when he was shown Ext. A the receipt of Rs. 100 from the petitioner on 1st February 1957 for election work from 1st February 1957 to 12th March 1957, that he had to admit that it was in his writing, though still he stated that he did not remember for what the amount was given to

him. He even went to the extent of saying that he never had any sort of any concern with the petitioner. The petitioner admitted that this P.W. 17 was one of his workers, that he had paid Rs. 100 to him on 1st February 1957 and that he had worked for him till 12th March 1957. From the aforesaid statements of P.W. 17, there can be little doubt that he is a thoroughly unreliable and untruthful witness, besides being an interested person. Both these witnesses came to say that they had received Rs. 5 each from Alimuddin for giving their votes to the respondent. Both of them, however, very conveniently stated that the payments were made at their respective houses when no one else was present. P.W. 5 stated that before he was examined in court, he did not tell about the payment to anyone. P.W. 17, however, stated that 20 to 25 days after the result, he had told the petitioner about it; still the petitioner did not mention about such payment in his Petition. The petitioner in his examination-in-chief came to say that he had learnt from P.Ws. 5 and 17 that Alimuddin had paid Rs. 5/- each to them as also to the other persons named in the amendment petition. He also stated that before he filed his Election petition, he had information about Alimuddin having paid Rs. 5 per vote and it was not that he was merely offering to pay Rs. 5 per vote. It is, however, curious why the petitioner kept a secret about the alleged fact of payment in his Petition and admitted that he had got in his petition written about only offer and not payment. He also admitted that neither in his Petition nor in his amendment petition, he made mention about actual payment of Rs. 5 per vote to any person. In his cross-examination the petitioner stated that after the amendment petition of 16th July, 1957 and before 20th September, 1957 he gathered more informations which were given to him by Alimuddin the worker of the respondent and no one else, adding, in respect of Akbar Ali (P. W. 5). I may note here that the examination-in-chief of the witness took place before tiffin time and the cross-examination began after tiffin hour. In his examination-in-chief he did not make any mention of having got any information from Alimuddin. Undoubtedly during tiffin time it was realised that Akbar Ali himself had stated that before the day he was examined, he did not tell anybody about the payment and so the petitioner came with such an answer in his cross-examination for the first time. Be that as it may, the evidence of P. Ws. 5 and 17, besides being interested, does not inspire any confidence and is unworthy of credit. On the other hand Alimuddin (R.W. 5) in his examination-in-chief emphatically denied to have paid or to have offered to pay Rs. 5 per vote to P. Ws. 5, 17 or any other person named in the Petition. He also emphatically denied that he had told the petitioner that he had paid Rs. 5 to Akbar Ali for vote for the respondent. It may be noted here that the witness was examined in chief and partly cross-examined on 22nd July, 1958 and partly cross-examined on 23rd July, 1958. On 23rd July, 1958 about the end of his cross-examination he stated that Akbar Ali was a relation of both of his fathers-in-law, that they were on visiting terms, and that he had paid Rs. 5 to Akbar Ali for his vote. He also stated that he met the petitioner on the day of counting of votes and had told him sarcastically (tauntingly) that he had paid Rs. 5 to Akbar Ali for his vote. To court questions he stated that during the voting period, Akbar Ali wanted Rs. 5 from him so he advanced it out of his own pocket but it was not for voting for the respondent. He also stated that he did not tell him for whom to vote. He further gave an explanation that because he was reminded of the Oath taken by him so he made the reply about payment of Rs. 5 to Akbar Ali for his vote in his cross-examination. Regard being had to the emphatic denial of this witness in his examination-in-chief on 22nd July, 1958, I have no manner of doubt that the aforesaid statements in cross-examination were inspired, obviously at the instance of the petitioner, simply to reconcile the petitioner's statement and I am led to think that the pretext of being reminded about the oath was a stage managed affair. One cannot lose sight of the fact that this Alimuddin is also a Momin and a resident of this town, and that after the election, he has ceased to have concern with the respondent. It is, therefore, no wonder that he was prevailed upon to make such statements to help the petitioner who was the Secretary of the Momin Jamait of the district. I am, therefore, not prepared to put any importance to these statements of the witness either in favour of the petitioner or against the respondent. Under the circumstances I would accept the statement of the witness in his examination-in-chief as true. There is nothing in the evidence of this witness or any other that any such payment was made at the instance of the respondent. Considering the entire evidence and circumstances on the record, I feel no hesitation in answering this issue also in the negative.

#### Issue No. 5.

24. Before discussing the evidence on this issue, it is necessary to deal with the question of law which is in controversy between the parties. The learned advocate for the respondent contended that in view of the provisions of Section 123(6) of the Representation of the People Act, the only question for determination before the Tribunal is whether the election expenses of the respondent exceeded the prescribed limit. He has conceded that for that purpose, the Tribunal can go into the question whether in the account submitted by the respondent he has concealed any expenditure and no further. According to him, it is not open to the Tribunal to go into the question whether the account has been separately and correctly maintained and contains all the particulars as prescribed by the rules. On the other hand it has been argued by the learned lawyer for the petitioner that non-compliance of any of the Clauses (1), (2) and (3) of Section 77 of the Representation of the

People Act amounts to a corrupt practice within the meaning of Section 123(6). To appreciate the respective contentions of the parties, it is necessary to refer in detail to the provisions of Section 123(6) and Section 77 of the Act. Section 123(6) provides that the incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice. Section 77 runs as follows.—

- “(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive
- (2) The account shall contain such particulars, as may be prescribed,
- (3) The total of the said expenditure shall not exceed such amount as may be prescribed”

The learned advocate for the respondent has submitted that Clause 1 of Section 77 merely provides that a separate and correct account of expenses in connection with the election incurred or authorized by the candidate or his election agent should be kept and Clause (2) provides that the account should contain such particulars as are prescribed by the Rules and thus their contravention does not amount to contravention of Section 77 with regard to incurring or authorising of expenditure. According to him it is the contravention of Clause 3 alone which amounts to contravention of the provisions of Section 77 with regard to incurring or authorising expenditure. The learned lawyer for the petitioner, however, maintained that Section 123(6) refers to entire Section 77 and not only to any of its Clauses and, therefore, contravention of any of its Clauses is a corrupt practice. In my opinion the contention of the learned advocate for the respondent is correct. Section 123(6) prohibits only incurring or authorising expenditure in contravention of Section 77 and not keeping account in contravention of Section 77. In this connection it may be mentioned that before the amendment of the Representation of the People Act 1951 in 1936, filing of a return of expenses which was false in material particulars was also a corrupt practice but there is no such provision now in the Act. Section 7(c) of the Representation of the People Act lays down that if a person fails to lodge an account of his election expenses within the time and in the manner required by or under this Act, he would be disqualified from being chosen as or for being a member of either House of Parliament or of a Legislative Assembly or Legislative Council of a State. But the disqualification under Section 7 Clause C cannot take effect until expiry of two months from the date on which the Election Commission has decided that the account of election expenses has not been lodged within the time and in the manner required by or under the Act [vide Section 8(b)]. For such a decision, the Election Commission has to act according to Rule 134. Under that Rule, the disqualified candidate is also entitled to make a representation to the Election Commission for removal of disqualification. It would thus appear that the penalty for the contravention of the provisions of Section 77(1) and (2) is the disqualification under Section 7(c) which is a matter for the Election Commission and not for the Tribunal. Section 100(d) (iv) provides that if the result of the election in so far as it concerns a returned candidate has been materially affected by any non-compliance with the provisions of the Constitution or of the Act or of any Rule or Order made under the Act, the Tribunal shall declare the election of the returned candidate to be void. It is the only provision in the Act on the basis of which it can possibly be argued that the election of a candidate should be declared void on the ground that he has not kept account as required by Section 77 and the Rules. But such an argument also cannot stand scrutiny. It is obvious that not keeping the accounts as prescribed by the Rules and Section 77 cannot materially affect the result of the election of a candidate and, therefore, can be no ground for setting aside the election. To my mind, therefore, not keeping the account correctly or in the prescribed manner cannot be a corrupt practice within the meaning of Section 123(6). Incorrectness of account will matter only when it can be possibly made out that the real expenditure incurred is in excess of that provided under Section 77. If the Legislature had intended contravention of all the Clauses of Section 77 in Section 123(6) of the Act, it would have simply stated therein “contravention of the provisions of Section 77” and not “incurring or authorising of expenditure in contravention of Section 77”. In support of what I have said above, I can do nothing better than to quote from the unreported judgment of Their Lordship of the Bombay High Court dated 19th June, 1938 in Appeal No 199 of 1938 from original decree, the certified copy of which has been filed before me by the respondent—

“It will be convenient to examine first the legal contentions pressed before us by learned Counsel for the appellant before we turn to certain argument on the merits of the case urged before us. It was contended that Clause (vi) of section 123 of the Act which enumerates “incurring or authorising of expenditure in contravention of Section 77” as one of the corrupt practices, is wide enough to include all the requirements of Section 77. (Section 77 of the Act reproduced)

The argument proceeded that the respondent had not kept a separate account of all expenditure in connection with the election incurred or authorised by him, or by his election agent for the relevant period. It is possible to suggest that the account kept by the respondent which is in the form of a statement does not meet with the requirements of that Section. It is also possible to suggest that that statement does not contain the particulars prescribed by Rule 131. That Rule requires that the account of election expenses to be kept by a candidate shall contain particulars in respect of each item of expenditure from day to day and among the requisite particulars are the date on which the expenditure was incurred or authorised, the nature of the expenditure and the date of payment. It was also said that the provisions of section 77 are mandatory, and what the respondent did in the matter of maintenance of the account was in violation of the provisions of that section. The argument ran that this failure on the part of the respondent to maintain a separate account with all the particulars required by Rule 131 of itself amounts to a corrupt practice within the ambit of Section 123(vi). In our Judgment, the contention is untenable. The language of clause (vi) of section 123 is express and explicit and that apart from the consideration that any clause which lays down any corrupt practice must be strictly construed. The Clause does not say that anything which is in contravention of Section 77 is a corrupt practice. But what it says is that the incurring or authorising of expenditure in contravention of that section is a corrupt practice. Incidentally, we may observe that there is a provision in the Representation of People Act, 1951 which deals with "disqualifications for membership of Parliament or of a State Legislature" and clause (c) of that Section relates to failure on the part of a person who has failed to lodge an account of his election expenses within the time and in the manner required under the Act. The carrying out of that requirement or failure to do so is a matter not for the Election Tribunal but for the Election Commission. It is that body which is concerned with this aspect of the matter. We do not deem it necessary in view of the plain and unambiguous language of clause (vi) of Section 123 to discuss the matter in any detail. The present contention of the appellant must be negatived."

I may also refer to the case of Pyari Mohan Dass *versus* Durga Shankar Das and another reported in A.I.R. 1958 Orissa page 125 wherein Their Lordship accepted the contention to the effect that Section 123(6) which says that the incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice applies only to the case where the expenditure incurred or authorised exceeded the maximum prescribed limit under Section 77 and the Rule made thereunder of the total of the election expenditure. My attention was also drawn to the case of T. C. Basappa *versus* T. Nagappa and others reported in 3 E.L.R. page 197 at page 244 where the learned Tribunal quoted with approval the following passage from the law of Elections by Doabla 2nd Edition 1952:—

"It is for the petitioner to prove during the trial of an election petition that the return of expenses filed by the respondent is false in material particulars.....  
..... but the plea regarding non inclusion of certain items in the return must be taken in the petition otherwise it may be disallowed."

The learned Tribunal in that case also observed that corrupt motive for making a false return must be shown and that merely giving of an incomplete description is not a material irregularity. In view of the amendment and what I have observed above, the respondent had not have relied on this decision. I, therefore, do not consider it necessary to discuss the evidence led by the parties with regard to the allegations that the account of expenses has not been kept by the respondent as required by the Act and Rules made thereunder, that particulars and purpose of certain expenditure have not been given and that receipts from the payees of some expenses shown under some vouchers were not obtained. In this connection the petitioner also alleged that the respondent submitted in the return of his election expenses, the following vouchers but no such person could be traced at the place of address shown therein, that the respondent gave wrong and false address purposely in order to suppress the true nature of expenditure:—

Money paid	Names	Date	Address
Rs. 50b/-	S. K. Mozim	23-2-57	Jagarnathpur, Ranchi, voucher No. 94
Rs. 30/-	A. H. Khan	16-3-57	Borea " 244
Rs. 399/13/-	S. A. Chaudhury	16-2-57	Pleader, Ranchi " 232
Rs. 90/-	Kaji Saheb	3-3-57	Hindpuri " 165
Rs. 87/-	S. N. Hoda Anwar Hussain }	3-3-57	Arrah Rewali " 166

In his evidence also the petitioner stated that no such person named in such vouchers existed. He, however, admitted that he had not been to Jagarnathpur and no one from that village has been examined to say that no person like Sk. Mozim existed. S.A. Chaudhury who is a pleader at Khunti a sub division of the district of Ranchi has himself been examined as R.W.6. He has stated that he worked for the respondent and the voucher [Ext. F.(1) No. 232] had been submitted by him. In respect of the other persons the petitioner stated that he had himself gone to the other places and did not find the other persons named in the aforesaid vouchers. He admitted that he knew Maulana Neyamtullah Bhagalpuri who lives in Hindpuri but denied that he was known as Qazi Saheb. In respect of Arrah Kewali and Hindpuri, the petitioner stated that he had been to those places and stayed for half an hour. There is no person from any of these places coming forward to say that any enquiry had been made from him by the petitioner or that no person like Qazi Saheb, S. N. Hoda and Anwar Hussain existed. On the other hand Alimuddin (R.W. 3) stated that he knew Sk. Mozim of Jagarnathpur and that he was a worker for the respondent. He also stated that S. N. Hoda lives in Pahartoli Mahalla of this town and that he was a worker for the respondent at Arrah Kewali. He also stated that Maulana Neyamtullah Bhagalpuri is known as Qazi Saheb and he had taken him to Banapuri and its neighbouring villages for canvassing for the respondent. Mohan Das (R.W.4) also stated that he had obtained voucher Nos. 94, 232 and 244 from Sk. Mozim, S. A. Chaudhury and A. H. Khan respectively. He also stated that he did not obtain any separate voucher from Qazi Saheb, S. N. Hoda and Anwar Hussain and that he never obtained any voucher from any fictitious person. He also stated that to the best of his knowledge they were real persons. Wahab Azad (R.W. 8) also stated that he arranged some workers for the respondent and that among them were S. N. Hoda, Anwar Hussain and others. He also stated that Maulana Neyamtullah Bhagalpuri is known as Qazi Saheb. No doubt except S. A. Chaudhury, the other persons named in the aforesaid vouchers have not been examined but there being no satisfactory evidence on the side of the petitioner, it cannot be said that the aforesaid persons are fictitious ones. Even assuming for argument's sake that no such person existed, it will only show that the respondent did not incur the expenses mentioned in the aforesaid vouchers but that would not in any way help the petitioner.

23. I now proceed to consider whether the election expenses incurred or authorised by the respondent exceeded the prescribed limit. At the very out set I must observe that the onus of proving it is on the petitioner and that he has to prove it as a fact. The petitioner has not cared to get proved even the account of election expenses of the respondent which was called for by him to show what amount had been shown by the respondent to have been spent by him. In the petition, the petitioner made a vague allegation that the respondent actually incurred expenditure which could not be less than Rs. 30,000. He mentioned certain items of expenditure which according to him were omitted by the respondent but curiously enough he did not choose to give any particulars about the amount and dates of such expenditure. In his evidence the petitioner became more vague and contended by simply saying that all the expenses had not been included by the respondent and that the respondent spent beyond the prescribed limit. He also stated that four vouchers dated 18th March 1957 submitted by Mr. T. Bodra were not included in the account. Coming to the alleged omissions of expenditure by the respondent, the first is that the cost of obtaining certified copy of the electoral roll of the respondent of his name in his home constituency, Bombay. On behalf of the petitioner there is no evidence to show what amount had been spent for the same. The respondent in his written statement stated that the cost was less than Rs. 10 and that the expenditure had been incurred before commencement of the prescribed period and as such it was not included in the total expenditure. In his evidence the respondent stated that the cost was only nine annas and there is nothing on the side of the petitioner to the contrary nor there is any evidence to show that the expenditure had been incurred within the prescribed period. The second item is about travelling expenses of the respondent from Bombay to Ranchi when he had come to file his Nomination paper for the first time. Again in this respect there is no evidence on the side of the petitioner to show what amount was or could have been spent by the respondent on such journey. The evidence of the respondent is that he left Bombay for Ranchi on the 25th or 26th of January, 1957. He also stated that up to Calcutta he came by plane and from Calcutta to Jamshedpur by plane of the Tatas and from Jamshedpur to Ranchi by a car of the Tatas. He also stated that he had not to pay anything for the plane journey from Calcutta to Jamshedpur or for the car for carrying him from Jamshedpur to Ranchi. In his written statement the respondent stated that the amount spent over this journey did not exceed Rs. 300 and there is no evidence on the side of the petitioner to the contrary. It has also not been shown on behalf of the petitioner that if these amounts are added to the total of the expenditure shown in the return submitted by the respondent, it would exceed the prescribed limit. The third item is in respect of salary of the driver of the car of the respondent. In this respect also there is no evidence on the side of the petitioner and the evidence of the respondent is that he had not paid anything to the driver whose services had been placed by a friend of his



and to whom he had not to pay anything. The next allegation is that actual cost of petrol and printing cost had not been shown by the respondent and that some bills in respect of the same were outstanding. In respect of these allegations also there is no evidence even with the name on the side of the petitioner and the allegations were denied by the respondent. It is further alleged that the respondent had not shown the cost of his travelling expense from Ranchi to Patna when he had gone to take the blessings of Shri Jai Prakash Narayan in the last week of March. In this respect also there is no evidence on the side of the petitioner to show what amount had or could have been spent by the respondent. The respondent on the other hand stated that he had been to Patna once to meet his friends including Mr Jai Prakash Narayan and that he had incurred no expenditure as Mr Jaipal Singh had placed his touring car at his disposal for the purpose and that he had not to pay anything for the same. It was further alleged that the respondent had not mentioned his expenditure on microphone but there is no evidence on the side of the petitioner to show that any microphone was used by the respondent or anyone on his behalf in respect of the election of the respondent nor any amount in respect of such expenditure has been mentioned. The respondent denied to have incurred any such expenditure. Lastly it is said that the respondent did not include four vouchers showing a total expenditure of Rs 147 6 0 submitted by Mr T Bodra and which were included among the vouchers submitted by the respondent along with his return of expenditure. There is no evidence on the side of the petitioner to show that the amounts in these vouchers were actually spent for the respondent's election. The petitioner admitted that there was a candidate of the Jharkhand Party from Chandil Assembly seat. It is not denied that Mr I Bodra was a worker for both the respondent and that candidate. The petitioner showed his ignorance that that candidate for the Chandil Assembly seat was Shri Piemchand but he admitted that the first of these four vouchers is in his name. The evidence of the respondent is that these four vouchers were for expenses incurred by Mr T Bodra on behalf of the Jharkhand Party candidate for the Chandil Assembly seat and that Mr T Bodra inadvertently attached those vouchers with the account given by him to the respondent who by oversight sent them to the Returning Officer. There is nothing to disprove the statement of the respondent. We thus find that the petitioner has miserably failed to prove that the respondent incurred or authorised expenditure of any amount beyond the prescribed limit. On the other hand the respondent stated that he never incurred nor authorised any expenditure in contravention of the law and that no expenditure incurred for his election expenses had been left out. In this connection I may refer to the evidence of the petitioner who stated that he had inspected accounts of the election expenses submitted by the respondent two or three days after its submission with a view to file his election petition and that the statements in para 5(h) of his petition (the allegation of expenditure beyond the prescribed limit) were derived from the account and vouchers submitted by the respondent and that he had no other source of information in respect of the same. One really fails to understand how the account and vouchers submitted by the respondent could show that the amount spent by the respondent exceeded the prescribed limit. There being thus no evidence on the side of the petitioner to show that the respondent had incurred or authorised expenditure beyond the prescribed limit this issue also must be answered in the negative.

#### Issue No 2 —

26 Section 83(1)(c) provides that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 (5 of 1908) for the verification of pleadings. Clause 2 of Rule 15 of Order VI of the Civil Procedure Code lays down that the person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his knowledge and what he verifies upon information received and believed to be true. In the verification, however, the petitioner stated that the statements contained in paragraphs 1 to 11 of the petition were true to the best of his knowledge, information and belief. He did not specify the paragraphs which were of his own knowledge and which were upon information received and believed to be true. In his evidence, the petitioner stated that except the matters in paragraphs 1 to 3 (about the names of candidates, dates of polls and dates of counting and result), the matters in other paragraphs were not true to his knowledge. There can, therefore, be no doubt that the verification of the election petition is defective. It was, however, conceded by the learned advocate for the respondent that on this ground the petition could not be thrown off. If the petitioner would have succeeded on the issue of corrupt practices, I would have certainly given an opportunity to the petitioner to remedy the defect. The issue is, therefore disposed of accordingly.

#### Issue No 6 —

27 On the findings recorded above, the election petition must fail and as such the question of the petitioner being entitled to be declared elected does not arise. Even if the petition would have succeeded, the petitioner could be entitled to this relief only if he could show (a) that in fact the petitioner received a majority of the valid votes or (b) that but for the votes obtained by the returned candidate by corrupt practice, the petitioner or such

other candidate would have obtained a majority of the valid votes. There is, however, no evidence even worth the name to show either and as such this issue is also answered in the negative.

28 In the result it is

#### ORDERED

That the Election Petition be dismissed with costs which is assessed at Rs 500 and which will be paid to the respondent No 1 out of the amount of security deposited by the petitioner. The recrimination petition shall also stand dismissed for non-prosecution without cost.

(Sd) M SULAIMAN, Member,  
Election Tribunal, Ranchi.

RANCHI,

The 25th day of August, 1958.

Certified that the above judgment has been dictated and corrected by me

(Sd.) M SULAIMAN, Member,  
Election Tribunal, Ranchi.

RANCHI,

The 25th day of August, 1958

#### ANNEXURE

#### IN THE COURT OF THE MEMBER, ELECTION TRIBUNAL RANCHI

The 20th June, 1958.

ELECTION PETITION No 841 of 1957

Md Ibrahim Ansari

*Petitioner*

*Versus*

M R Masani and others—*Respondents*

*For the petitioner*—Shri R K Tewary, Advocate

*For the Respondent No 1*—Shri N N Sen Gupta, Pleader.

#### FINDINGS ON ISSUE NO 1

1 On 31st July 1957 Respondent No 1, even before he filed a written statement, filed a petition raising a preliminary objection to the maintainability of the Election Petition on the ground of defect in the security deposit made by the petitioner and prayed for dismissal of the Election Petition. The petition was heard by Shri R K Sinha, the then Member of the Election Tribunal on 26th August, 1957 and 27th August, 1957. On 31st August 1957 he passed orders to the effect that the preliminary point would be considered at the time of the final hearing.

2 Respondent No 1 then went up to the Hon'ble High Court against the said order and his application in the High Court was also dismissed. He then filed an appeal in the Supreme Court of India and Their Lordships of that Hon'ble Court by their judgment and order dated 22nd April, 1958 have sent back the case for hearing of the preliminary objection. In the meantime issues were framed and Issue No 1 regarding this preliminary point stands in the following terms—

'Is the Election Petition liable to be dismissed for non compliance of the provisions of Section 117 of the Act'

This preliminary issue, therefore, was heard on 13th June 1958

3 Their Lordships of the Hon'ble Supreme Court along with this case heard two other cases and Their judgment governs all the three. They had to consider whether the provisions of Section 117 of the Representation of the People Act is mandatory or directory. Their Lordships at page 28 of their judgment have held that the provisions are directory and not mandatory. They have laid down the following test for determining whether the security deposit is valid or not—

"What is of the essence of the provision contained in section 117 is that the petitioner should furnish security for the costs of the petition, and should enclose along with the petition a Government Treasury receipt showing that a deposit

of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India, is at the disposal of the Election Commission to be utilised by it in the manner authorised by law and is under its control and payable on a proper application being made in that behalf to the Election Commission or to any person duly authorised by it to receive the same be he the Secretary to the Election Commission or any one else.

If, therefore, it can be shown by evidence led before the Election Tribunal that the Government Treasury receipt or the chalan which was obtained by the petitioner and enclosed by him along with his petition presented to the Election Commission could on a necessary application in that behalf be in a position to realise the said sum of rupees one thousand for payment of the costs to the successful party it would be sufficient compliance with the requirements of section 117. No such literal compliance with the terms of Section 117 is at all necessary as is contended for on behalf of the appellant before us."

4. The respondent has cited before me three rulings i.e. the cases of (i) Sardar Harihad Singh *versus* Singh Ganga Prasad reported in 1958 B.L.J.R. page 279, (ii) Nand Kishore Prasad Singh *versus* Member, Election Tribunal, Patna, reported in A.I.R. 1958 Patna page 306 and (iii) Sarvsi Mahendra Pal Singh and others *versus* Shri Mohan Lal Gautam and others (a) judgment of the Member, Election Tribunal, Allahabad published in the U.P. Gazette, Extra Ordinary, dated 8th November, 1957. All these cases were decided prior to the judgement of Their Lordships of the Hon'ble Supreme Court and all the observations, on which reliance is placed, stand over ruled by the Supreme Court judgment.

5. Therefore, the question which arises for consideration in this case, to reproduce in the language of the Hon'ble Supreme Court itself, is whether on the evidence led before this Tribunal, can it be held that the Government Treasury chalan which was obtained by the petitioner and enclosed by him along with his petition presented to the Election Commission was such that the Election Commission could on a necessary application in that behalf be in a position to realise the said sum of rupees one thousand for payment of the costs to the successful party. It was contended by the learned lawyer for the respondent that as in the chalan (Ext 1) even the name of "Election Commission" is not mentioned, the deposit must be held to be invalid. The test laid down by the Hon'ble Supreme Court is not whether any particular name is mentioned in the chalan or not but the test is whether the Election Commission could on a necessary application in that behalf be in a position to realise the money deposited or not.

6. The petitioner has examined two witnesses. M. Fakhruallah Witness No. 1 for the petitioner is an Accountant of the local Criminal Court (Treasury Section). He has proved the entry in the Revenue Deposits Central Register (Ext 1) showing that the money deposited by the petitioner was credited in the register for Revenue Deposits for the Central Government as security for Election costs. He has further said that the amount deposited could be disbursed by the Election Commission. Being cross-examined he said that he stated in his evidence in chief that the amount could be disbursed by the Election Commission because in the chalan the amount was deposited as security for costs of Election Petition. He further said that Revenue Deposits can be operated only by the officer, if any, under whose orders the amount is deposited or by the officer, if any, in whose favour such amount is deposited. Bhupendra Nath Chaudhury witness No. 2 for the petitioner is the Superintendent in the office of the Accountant General Bihar for the deposit section. He has said in examination in chief that this amount was disbursable by the Election Commission and only the Election Commission and none else could operate on the same. In his cross examination, like witness No. 1, he too stated that because the deposit was made as security for costs of Election Petition so he said in his chief that only the Election Commission and no one else could operate on the amount. He further stated that under the Treasury Rules (Central) the amount of deposit is disbursable by only the authority in whose favour it had been deposited and no other.

7. The respondent has also examined one witness. He is senior most Assistant Account Officer in the office of the Accountant General, Bihar. In his examination in chief he stated that under the Central Treasury Rules the amount deposited under "Revenue Deposits" can be operated on either by the officer at whose instance the amount is accepted or by the authority in whose favour it is deposited and no other and since there was no officer or authority mentioned in the chalan (Ext 1) in whose favour it was deposited, it could not be disbursed under the rules by the Election Commission. In cross examination he admitted that the Election Commission is a Statutory body and there is a separate head for deposit in its favour in the deposit registers and that amounts deposited under that head could be operated on by the Election Commission only and no other. But he added that that was only in cases where the deposit was in favour of the Election Commission. In answer to the next question he stated that if he had been in the deposit section, he would have credited the amount under Ext. 1 to the head mentioned in it in column '5'.

8. In my opinion, the evidence of all the afore said witnesses who have got experience in matters of "Revenue Deposits" and their disbursement read with Ext. 1, show that the amount of rupees one thousand deposited in this case by the petitioner under the chalan (Ext. 1) should have been credited and was in fact credited under the head separately meant for deposits in favour of the Election Commission. All the witnesses are also agreed on the point that money deposited under that head could be operated on only by the Election Commission and no other. The evidence of R.W. 1 that it could be operated on by the Election Commission only if it was in favour of the Election Commission loses its weight in view of his evidence in the next sentence that if he had been in the deposit section he would have also credited the money under the head mentioned in column '5' of Ext. 1 i.e. the head specially meant for the Election Commission. My attention was drawn to certain rules of the Central Government Treasury Rules but I do not find anything in them on the basis of which it can be held that this deposit cannot be realised by the Election Commission. The relevant rules are of similar nature both as to deposits and disbursements. If the deposit could be accepted under the head specially meant for the Election Commission and has been actually accepted in this case under that head, there is nothing in the rules which can prevent the Election Commission from realising that amount. Accordingly, I hold that the Election Commission can on a necessary application in that behalf be in a position to realise the amount deposited in this case for payment of costs to the successful party. Applying the test laid down by the Hon'ble Supreme Court, I hold that the deposit in this case is not of such a nature which makes the Election Petition liable to be dismissed for non-compliance of the provisions of Section 117 of the Representation of the People Act, 1, therefore, answer issue No. 1 in the negative.

(Sd.) M. SULAIMAN, Member,

*The 20th June, 1958*

Election Tribunal, Ranchi.

Dictated and corrected by me.

[No. 82/341/57/13613.]

(Sd.) M. SULAIMAN, Member,

By Order,

Election Tribunal, Ranchi, 20-6-58.

DIN DAYAL, Under Secy.